



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

अंक: 54	दिनांक, शनिवार, 30 सितम्बर, 2006/8 आश्विन, 1928	संख्या : 27
विषय सूची		
भाग-1	वैधानिक नियमों को छोड़कर हिमाचल प्रदेश के राज्यपाल और हिमाचल प्रदेश हाई कोर्ट द्वारा अधिसूचनाएं इत्यादि	1102—1126 तथा 1144
भाग-2	वैधानिक नियमों को छोड़कर विभिन्न विभागों के अध्यक्षों और जिला मैजिस्ट्रेटों द्वारा अधिसूचनाएं इत्यादि	1126—1127
भाग-3	अधिनियम, विधेयक और विधेयकों पर प्रवर समिति के प्रतिवेदन, वैधानिक नियम तथा हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश हाई कोर्ट, फाईनैण्डेंसियल कमिशनर तथा कमिशनर-पब्लिक-इंक्वैरी द्वारा अधिसूचित आदेश इत्यादि	1127—1131
भाग-4	स्थानीय स्वायत्त शासन, म्युनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटिफाइड और टाऊन एरिया तथा पंचायती राज विभाग	
भाग-5	वैयक्तिक अधिसूचनाएं और विज्ञापन	1131—1144
भाग-6	भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन	
भाग-7	भारतीय निर्वाचन आयोग (Election Commission of India) की वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं	
—	अनुपूरक	

30 सितम्बर, 2006/8 आश्विन, 1928 को समाप्त होने वाले सप्ताह में निम्नलिखित बिज्ञप्तियां 'प्रसाधारण राजपत्र, हिमाचल प्रदेश' में प्रकाशित हुईं: —

बिज्ञप्ति की संख्या	विभाग का नाम	विषय
No. FDS-B(2)-1/97-Loose, dated 15th September, 2006.	Food, Civil Supplies and Consumer Affairs	Additional Charge for Members of District Consumer Disputes Redressal Forum, Kangra (at Dharamshala) of District Consumer Disputes Redressal Forum, Chamba,
No. EDN-C-A(1)-13/2001, dated 8th September, 2006.	Elementary Education	Opening of new Government Primary School at Dhadi, Gram Panchayat Ravin, Tehsil Jubbal, District Shimla (H. P.) with condition.

भाग-1 वैधानिक नियमों को छोड़कर हिमाचल प्रदेश के राज्यपाल और हिमाचल प्रदेश हाई कोर्ट द्वारा अधिसूचनाएं इत्यादि

हिमाचल प्रदेश हाई कोर्ट

NOTIFICATIONS

Shimla-171001, the 23rd June, 2006

No. HHC/Admn. 6(24) 74-VII-13566-78. In exercise of the powers vested in it under sub-section 2 and 3 of section 11 of the Code of Criminal Procedure, 1973 the Hon'ble High Court is pleased to confer the powers of Judicial Magistrate 1st Class, upon the Civil Judge (Junior Division)-cum-JMIC Karsog to be exercised by him within the local limits of Ani Sub-Division of Civil & Sessions Division, Kinnaur with immediate effect.

Shimla-171 001, the 23rd June, 2006

No. HHC/Admn. 6 (24) 74-VII-13653-65. In exercise of the powers vested in it under sections 11 and 12 of the Himachal Pradesh Court Act, 1976 (Act No. 23 of 1976, the Hon'ble High Court is pleased to confer the powers of Civil Judge (Junior Division) upon the Civil Judge (Junior Division)-cum-JMIC, Karsog to be exercised by him within the local limits of Ani Sub-Division of Civil & Sessions Division, Kinnaur with immediate effect.

Shimla-171 001, the 24th June, 2006

No. HHC Admn. 6(23)/74-XIII-13775. Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H. P. Financial Rules, 1971, Volume-I, is pleased to declare the Civil Judge (Sr. Division)-cum-JMIC, Ghumarwin as Drawing and Disbursing Officer in respect of the court of Civil Judge (Sr. Division)-cum-ACJM, Ghumarwin and also the Controlling Officer of the purpose of T. A. etc. in respect of class -II, III and IV establishment attached to the aforesaid court under head "2014-Administration of Justice" during the leave period of Shri Bahadur Singh, Civil Judge (Sr. Division)-cum-ACJM, Ghumarwin w. e. f. 3-7-2006 to 15-7-2006 with permission to prefix Sunday falling on 2-7-2006 and to suffix Sunday falling on 16-7-2006, or until he returns from leave.

Shimla-171 001, the 24th June, 2006

No. HHC GAZ/14-227/96-13764. Hon'ble the Chief Justice is pleased to grant 13 days earned leave w. e. f. 3-7-2006 to 15-7-2006 with permission to prefix Sunday falling on 2-7-2006 and to suffix Sunday falling on 16-7-2006 in favour of Shri Bahadur Singh, Civil Judge (Sr. Division)-cum-ACJM, Ghumarwin.

Certified that Shri Bahadur Singh is likely to join the same post and at the same station from where he proceeds on leave after expiry of the above period of leave.

Also certified that Shri Bahadur Singh would have continued to hold the post of Civil Judge (Sr. Division)-cum-ACJM, Ghumarwin, but for his proceeding on leave for the above period.

Shimla-171 001, the 24/26th June 2006

No. HHC/GAZ/14-148/84-II-14105. Hon'ble the Chief Justice is pleased to grant 8 days earned leave w. e. f. 30-6-2006 to 7-7-2006 with permission to suffix Sunday falling on 8th and 9th July, 2006 in favour of Shri S. L. Sharma, Additional District and Sessions Judge (I) Kangra at Dharamshala.

Certified that Shri Sharma is likely to join the same post and at the same station from where he proceeds on leave after expiry of the above period of leave.

Also certified that Shri Sharma would have continued to hold the post of Additional District and Sessions Judge (I), Kangra at Dharamshala, but for his proceeding on leave for the above period.

Shimla-171 001, the 26th June, 2006

No. HHC/Admn. 16 (13) 74-VI-13831-38. Hon'ble the Chief Justice, in exercise of the powers vested in him U/S 139 (b) of the Code of Civil Procedure, 1908, U/S 297 (b) of the Code of Criminal Procedure, 1973 and Rule 4(v) of the H. P. Oath Commissioners (Appointment & Control) Rules, 1996 is pleased to appoint Shri Krishan Singh Hotta and Ms. Niyati Phakur, Advocates, Theog, District Shimla, as Oath Commissioners at Theog, District Shimla, H. P. for a period of two years, with immediate effect and with effect from 29-6-2006 respectively, for administering oaths and affirmations on affidavits to the deponents, under the aforesaid Codes and Rules.

Shimla-171 001 the 1st July, 2006

No. HHC/Admn. 6 (23)/74-XIII-14375. Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 1.26 of H. P. Financial Rules, 1971, Volume-I is pleased to declare the Additional District and Sessions Judge, Solan as Drawing and Disbursing Officer in respect of the Court of Fast Track Court, Solan and also the Controlling Officer for the purpose of T. A. etc. in respect of class -III and IV establishment attached to the aforesaid court under head "2014-00-105-03 (soon Plan) during the leave period of Shri Bhim Chand P. O. Fast Track Court, Solan with effect from 3-7-2006 to 14-8-2005 with permission to prefix Sunday falling on 2-7-2006 and to Suffix Sunday and gazetted holidays falling on 15th and 16th August 2006 or until he returns from leave.

Shimla-171 001, the 1st July, 2006

No. HHC/Admn. 3 (208)/84-II-14334. —13 days commuted leave on and with effect from 15-6-2006 to 27-6-2006 is hereby sanctioned *ex-post-facto*, in favour of Shri Bhag Chand Sharma, Secretary of this Registry.

Certified that Shri Bhag Chand Sharma, Secretary as joined the same post and at the same station from where he had proceeded on leave after expiry of the above leave period.

Certified that Shri Bhag Chand Sharma, would have continued to hold the same post of Secretary but for his proceeding on leave.

Shimla-171001 the 1st July, 2006

No. HHC/GAZ/14-153,84-I-14364. Hon'ble the Chief Justice is pleased to grant 43 days earned leave w. e. f. 3-7-2006 to 14-8-2006 with permission to prefix Sunday falling on 2nd July, 2006 and to suffix Sunday and gazetted holidays falling on 15th and 16th August, 2006 in favour of Shri Bhim Chand, Presiding Officer, Fast Track Court Solan, Himachal Pradesh.

Certified that Shri Bhim Chand is likely to join the same post and at the same station from where he proceeds on leave after expiry of the above period of leave.

Also certified that Shri Bhim Chand would have continued to hold the post of P. O. Fast Track court, Solan but for his proceeding on leave for the above period.

Shimla-171 001 the 3rd/4th July, 2006

No. HHC/Admn. 3 (18)/73-II-14470. —16 days earned leave on and with effect from 30-6-2006 to 15-7-2006 with permission to suffix Sunday falling on 16-7-2006 is hereby sanctioned in favour of Shri Bhagat Ram Sharma, Deputy Registrar of this Registry.

Certified that Shri Bhagat Ram Sharma, Deputy Registrar is likely to join the same post and at the same station from where he proceeds on leave after the expiry of the above leave period.

Certified that Shri Bhagat Ram Sharma, would have continued to officiate the same post of Deputy Registrar but for his proceeding on leave.

Shimla-171 001, the 4/5th July, 2006

No. HHC/GAZ/14-219/95-14576. Hon'ble the Chief Justice is pleased to grant 16 days earned leave w. e. f. 30-7-2006 to 14-8-2006 with permission to prefix special casual leave w. e. f. 16-7-2006 to 29-7-2006 and to suffix gazetted holidays falling on 15th and 16th August, 2006 in favour of Mukesh Bansal, Civil Judge (Sr. Division)-cum-ACJM (I), Dehra,

Certified that Shri Bansal is likely to join the same post and at the same station from where he proceeds on leave after expiry of the above period of leave.

Also certified that Shri Bansal would have continued to hold the post of Civil Judge (Sr. Division)-cum-ACJM, Dehra, but for his proceeding on leave for the above period.

Shimla-171 001, the 4/5th July, 2006

No. HHC/Admn. 6 (23)/74-XIII-14565. Hon'ble the Chief Justice in exercise of the powers vested in him under rule 1.26 of Himachal Pradesh Financial Rules, 1971, Volume-I, is pleased to declare the Civil Judge (Jr. Divn.)-cum-JMIC (II) Dehra as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Sr. Division)-cum-ACJM, Dehra and also the Controlling Officer for the purpose of T. A. etc. in respect of class-II III and IV establishments attached to the aforesaid courts under Head "2014 -Administration of Justice" during the leave period of Shri Mukesh Bansal, Civil Judge (Senior Division)-cum-ACJM Dehra w. e. f. 30-7-2006 to 14-8-2006 with permission to prefix special casual leave w. e. f. 16-7-2006 to 29-7-2006 and to suffix gazetted holidays falling on 15th and 16th August, 2006 or until he returns from leave.

By order,

Sd/-
Registrar General.

हिमाचल प्रदेश सरकार

कार्मिक विभाग
(मच्चिवालय प्रणामन प्रा० नि०-2)

अधिसूचना

शिमला-2, 15 सितम्बर, 2006

संख्या कार्मिक (प्रा० नि०-2) 7(जी) 1-1/2006-कार्मिक.—
यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामतः महाल योजना छोटा शिमला, तहसील व जिला शिमला में कार्मिक हेतु भूमि अधिन करनी प्रपेक्षित है। अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निदिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का प्रयोजन प्रपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इसमें सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भू-प्रयोजन अधिनियम, 1894 की धारा 4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रयोजन भूमि का प्रयोग करते हुए, राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों, उनके कर्मचारियों और अधिकारियों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उक्त धारा द्वारा प्रपेक्षित प्रयोजन अनुमत सभी कार्यों को करने के लिए गहर्ष्य अधिकार देते हैं।

4. कोई भी निम्नलिखित व्यक्ति, उक्त परिक्षेत्र में कृषि भूमि के प्रयोजन पर कोई आपत्ति हो, तो वह इस अधिसूचना के प्रकाशन होने के तारीख (30) दिन की अवधि के भीतर लिखित रूप में उप-संस्थान अधिकारी (नागरिक), तहसील व जिला शिमला (शहरी) के समक्ष अपनी आपत्ति दायर कर सकता है।

विस्तृत विवरणी		नमूनी शिमला (शहरी)	
जिला : शिमला	खसरा नं०	क्षेत्रफल (वर्ग मीटर में)	
मोहाल/मोहा			
छोटा शिमला	1158	111	25
	1159	3	36
	1160	1	96
	1161	22	35
	1162	3	20
	1163	184	93
	1165	12	96
	1166	36	90
	1167	393	54
	1168	4	80
	1169	28	40
	1164	287	57
	1174	40	72
जोड़	13	1131	94

प्रदेश द्वारा,
हस्ताक्षरित/-
मन्त्रि

PERSONNEL DEPARTMENT (Training and Foreign Assignments)

NOTIFICATION

Shimla-171 002, the 6/11th September, 2006

No. Per. (Trg.)-B(12)-2/2004. In partial modification to this department's notification No. PER (TRG)G (1)-1/95, dated 25th May, 1995, the Governor, Himachal Pradesh is pleased to enhance the rates for usages charges of Dhauladhar and Kailash Guest House at the Himachal Pradesh Institute of Public Administration with immediate effect as under :

(1) Trainees of Himachal Pradesh Institute of Public Administration and Officers of Himachal Pradesh Government coming on duty or for Departmental examination etc.

(i) Room with Attached Bath.	(ii) Room with Common Bath.
Rs. 10/- per head per day.	Rs. 6/- per head per day.

(2) Officers from other States/Government Institute on study tour/training courses.

(i) Room with Attached Bath.	(ii) Room with Common Bath.
Rs. 22/- per head per day.	Rs. 14/- per head per day.

(3) Non-Officials and Government Servants not on duty.

(i) Room with Attached Bath.	(ii) Room with Common Bath.
Rs. 50/- per head per day.	Rs. 25/- per head per day.

Note. In addition to the above the following will also be charged :—

(i) Geyser charges	Rs. 3/- per head per day.
(ii) Heating charge: (from 1st November to 31st March).	Rs. 5/- per head per day.

By order,

Sd/-
Pr. Secretary.

विभागीय परीक्षा बोर्ड

अधिसूचना

केमरलाउन, शिमला-171 012, 13 सितम्बर, 2006

सूचना हिपा (परीक्षा)-21/76-8.- भारतीय प्रशासनिक सेवा/हिमाचल प्रदेश प्रशासनिक सेवा, तहसीलदार/नायब-तहसीलदार तथा राज्य में कार्यरत अन्य समस्त राजपट अधिकारी/अपजपलित अधिकारी (घटोशक ग्रेड-2) व वरिष्ठ सहायक जिनके लिए विभागीय परीक्षा पास करना अनिवार्य है, के लिए इसका आयोजन अनुबन्ध "क" के अनुसार हिमाचल प्रदेश विभागीय परीक्षा बोर्ड, केमरलाउन, शिमला-171 012 द्वारा दिनांक 16-2-2007 से 23-2-2007 तक आयोजित की जा रही है। उम्मीदवारों की सूचना के लिये वित्तीय प्रशासन पत्रा संख्या-1 का आयोजन (समस्या के अन्तर्गत मण्डी तथा मरगाला में भी किया जाता है। इस परीक्षाओं का आयोजन हिमाचल प्रदेश विभागीय परीक्षा नियम, 1987 जोकि समय समय पर संशोधित किए गए हैं, के अन्तर्गत किया जाएगा।

अतः समस्त इच्छुक उम्मीदवारों को सूचित किया जाता है कि प्रतिदिन प्रातः का सात ठीक 10.00 बजे तथा सायं का 2.00 बजे बाहरी दीवार पर आरम्भ होगा। जो उम्मीदवार विभागीय परीक्षा में बैठना चाहते हों वे अपने आवेदन-पत्र निर्धारित प्रपत्र पर दो नम्बर सत्यापित पासपोर्ट साईज फोटोग्राफ सहित अपने-अपने विभागाध्यक्षों के माध्यम से प्रपत्र के भाग-II पर अपनी पसन्दगी सत्यापित करवा के सचिव, हिमाचल प्रदेश विभागीय परीक्षा बोर्ड, केमरलाउन, शिमला-171 012 को भेजित करें जोकि इस कार्यालय में 31-12-2006 तक पहुँच जाने चाहिए। निर्धारित अवधि के बाद प्रपत्र हुए आवेदन-पत्रों पर विचार नहीं किया जाएगा।

आवेदन-पत्र की अंतिम प्रति भी सचिव, हिमाचल प्रदेश विभागीय परीक्षा बोर्ड को भेजी जा सकती है। आवेदन-पत्र तथा सभी सारणी HIPA बैकग्राउंड <http://himachal.nic.in/hipa> से डाउनलोड करवा आवेदन-पत्र को दक्षित व फोटोस्टैट भी करवाया जा सकता है।

हस्ताक्षरित/-
सचिव।

H. P. BOARD OF DEPARTMENTAL EXAMINATIONS, HIPA, FAIRLAWNS, SHIMLA-171 012
DEPARTMENTAL EXAMINATIONS - FEBRUARY, 2007

DATE SHEET

IAS/HAS

Sl. No.	Date	Day	Time	IAS	HAS
1.	15-02-2007	Thursday	10 A. M. to 1 P. M.	Criminal Law & Procedure (Paper-1)	Criminal Law & Procedure (Paper-1)
			2 P. M. to 5 P. M.	Criminal Case (Paper-2)	Criminal Case (Paper-2)
2.	16-02-2007	Friday	10 A. M. to 1 P. M.	Revenue Law & Procedure (Paper-3)	Revenue Law & Procedure (Paper-3)
			2 P. M. to 5 P. M.	Revenue Case (Paper-5)	Revenue Case (Paper-5)
3.	17-02-2007	Saturday	10 A. M. to 1 P. M.		General Administration (Paper-6)
			2 P. M. to 5 P. M.	Hindi (Paper-4)	Hindi (Paper-4)
4.	19-02-2007	Monday	10 A. M. to 1 P. M.		Planning & Development (Paper-7)
			2 P. M. to 5 P. M.		Constitution & Civil Law (Paper-8)
5.	20-02-2007	Tuesday	10 A. M. to 1 P. M.	Civil Services Treasury & Financial Rules (Paper-9)	Civil Services Treasury & Financial Rules (Paper-9)
			2 P. M. to 5 P. M.	Special Acts (Criminal) Manuals & Rules (Paper-10)	Special Acts (Criminal) Manuals & Rules (Paper-10)
6.	21-02-2007	Wednesday	10 A. M. to 1 P. M.	Minor (Revenue) Acts and Manuals (Paper-11)	Minor (Revenue) Acts and Manuals (Paper-11)

IAS/IAS

Sl. No.	Date	Day	Time	IAS	IAS
			2 P.M. to 3.30 P.M.		Computer (Written)
			4 P.M. to 5 P.M.		(Practical) (Paper-14)
7.	22-02-2007	Thursday	10 A.M. to 11.30 A.M.	Motor Mechanism and Driving (Written)	Motor Mechanism and Driving (Written)
			12.15 P.M. to 5.00 P.M.	Practical (Paper-12)	Practical (Paper-12)
8.	23-02-2007	Friday	10 A.M. to 5 P.M.		Target Shooting (Rifle & Revolver) (Paper-13)

Venue: H. P. Public Service Commission, Nigam Vihar, Shimla-171 002

TEHSILDARS/NAIB-TEHSILDARS

Sl. No.	Date	Day	Time	Tehsildary	Naib Tehsildary
1.	17-02-2007	Saturday	2 P.M. to 5 P.M.	Hindi (Paper-4)	Hindi (Paper-4)
2.	19-02-2007	Monday	10 A.M. to 1 P.M.	Land Revenue Acts and Rules (Paper-1)	Land Revenue Acts and Rules (Paper-1)
			2 P.M. to 5 P.M.	Arithmetic and Patwari Mensuration (Paper-2)	Arithmetic and Patwari Mensuration (Paper-2)
3.	20-02-2007	Tuesday	10 A.M. to 1 P.M.	Minor Revenue Acts and Rules (Paper-3)	Minor Revenue Acts and Rules (Paper-3)
			2 P.M. to 5 P.M.	Criminal Law and Proce- dure (Paper-5)	Criminal Law & Procedure (Paper-5)
4.	21-02-2007	Wednesday	10 A.M. to 1 P.M.	Revenue Case (Paper-6)	
			2 P.M. to 5 P.M.	Local and Special Law (Paper-7)	
5.	22-02-2007	Thursday	10 A.M. to 1 P.M.	Local Fund Treasury and Financial Rules (Paper-8)	

Venue: H. P. Public Service Commission, Nigam Vihar, Shimla-171 002.

TECHNICAL/NON-TECHNICAL DEPARTMENTS:

Sl. No.	Date	Day	Time	Technical	Non-Technical
1.	15-02-2007	Thursday	10 A.M. to 1 P.M.	Concerned Departments (Paper-3)	Concerned Departments (Paper-3)
			2 P.M. to 5 P.M.		Concerned Departments (Paper-4)
2.	16-02-2007	Friday	10 A.M. to 1 P.M.	Financial Administration (Paper-1) (only for lectu- rers of Education Deptt.)	Financial Administration (Paper-1)
			2 P.M. to 5 P.M.	Financial Administration (Paper-1)	Financial Administration (Paper-1)
3.	17-02-2007	Saturday	10 A.M. to 1 P.M.		Concerned Departments (Paper-5)
			2 P.M. to 5 P.M.	Hindi (Paper-2)	Hindi (Paper-2)

Venue: 1. H. P. Public Service Commission, Nigam Vihar, Shimla-171 002.

2. Mandi and Dharamshala for Financial Administration only

EXCISE & TAXATION INSPECTORS:

Sl. No.	Date	Day	Time	Paper Name
1.	19-02-2007	Monday	10 A.M. to 1 P.M.	Law of Crimes (Paper-1)
			2 P.M. to 5 P.M.	Excise Law (Paper-2)
2.	20-02-2007	Tuesday	10 A.M. to 1 P.M.	Law Relating to Allied Taxes (Paper-3)
			2 P.M. to 5 P.M.	Sales Tax Law & Practices (Paper-4)
3.	21-02-2007	Wednesday	10 A.M. to 1 P.M.	Book Keeping & General Commercial Knowledge (Paper-5)

Venue: H. P. Public Service Commission, Nigam Vihar, Shimla-171 002.

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Shimla-2, the 11th September, 2006

No. EXN-B(6)-2/2005. In partial modification of this Department notification No. EXN-B(?) -1/2005, dated 14-8-2006 the Governor, Himachal Pradesh is pleased to order that Shri Purshotam Ram, Excise and Taxation Officer who was posted on promotion in Flying Squad, South Zone, Shimla will now be posted at MPB, Chakki against vacancy in the public interest with immediate effect.

By order,

Sd/-

Principal Secretary.

FINANCE DEPARTMENT

NOTIFICATION

Shimla-2, the 13th September, 2006

No. 8-85 73-Fin (T&A).—The Governor, Himachal Pradesh is pleased to order that Shri Baljit Singh, District Treasury Officer, Chamba shall stand retired from Government service with effect from 31st October, 2006 (A.N.) on attaining the age of superannuation.

By order,

SUTANU BEHURIA.

Principal Secretary.

विधि विभाग

प्रादेश

शिमला-2, 16 सितम्बर, 2006

संख्या एल० एल० आर०-ई० (9)-43/2005-लेज.—क्योंकि श्री आर० एल० गर्ग को इस विभाग की अधिसूचना संख्या एल० एल० आर०-ई० (9) 30/95-लेज, तारीख 3-12-1998 द्वारा नाहन उप-मण्डल, जिला सिरमौर के लिए नोटरी पब्लिक के रूप में नियुक्त किया गया था और उनका नाम नोटरी के रजिस्टर में क्रम संख्या 83 पर प्रविष्ट किया गया था ;

और क्योंकि श्री आर० एल० गर्ग ने नोटरी अधिनियम, 1952 की धारा 5(2) के अन्तर्गत अपेक्षित व्यवसाय प्रमाण-पत्र के नवीकरण के लिए विहित फीस जमा नहीं की है और उनके व्यवसाय प्रमाण-पत्र के नवीकरण की तारीख 31-3-2006 को समाप्त हो चुकी है ;

और क्योंकि श्री आर० एल० गर्ग ने अपना व्यवसाय प्रमाण-पत्र समर्पित करने का विनियम किया है और उन्होंने अपना व्यवसाय प्रमाण-पत्र रद्द करने का अनुरोध किया है।

अतः हिमाचल प्रदेश के राज्यपाल, नोटरी अधिनियम, 1952 की धारा 10(क) के साथ पठित नोटरी नियम, 1956 के नियम 13 (13) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री आर० एल० गर्ग, नोटरी पब्लिक का नाम नोटरी के रजिस्टर से तुरन्त हटाए जाने का आदेश देते हैं।

आदेश द्वारा,

हस्ताक्षरित/-
प्रधान सचिव।

[Authoritative English Text of this Department Notification No. LLR- (9)-43/2005-Leg., dated 16th September, 2006 as required under clause (3) of Article 348 of the Constitution of India]

LAW DEPARTMENT

ORDER

Shimla-2, the 16th September, 2006

No. LLR-E (9)-43/2005-Leg. Whereas Shri R. L. Garg was appointed as Public Notary for Nahan Sub-Division of Sirmaur district vide this Department Notification No. LLR-B(9) 30/95-Leg. dated 3-12-1998 and his name was entered at Serial No. 83 of Register of Notaries;

And whereas Shri R. L. Garg has not deposited the prescribed fee for the renewal of certificate of practice required under section 5 (2) of Notaries Act, 1952 and the date of renewal of his Certificate of Practice has expired on 27-12-2004;

And whereas Shri R. L. Garg has decided to surrender his certificate of practice and has made a request to cancel his certificate of practice,

Now, therefore, the Governor of Himachal Pradesh in exercise of powers conferred by section 10 (a) of the Notaries Act, 1952 read with rule 13(13) of the Notaries Rules, 1956 is pleased to order the removal of the name of Shri R. L. Garg, Notary Public, Nahan from the Register of Notaries with immediate effect.

By order,

Sd/-

Principal Secretary.

विधि विभाग

प्रादेश

शिमला-2, 16 सितम्बर, 2006

संख्या एल० एल० आर०-ई० (9)-10/2005-लेज.—क्योंकि श्री शक्ति चन्द चौहान को इस विभाग की अधिसूचना संख्या एल० एल० आर०-ई० (9) 6/98-लेज, तारीख 18-3-2000 द्वारा जिला हमीरपुर के लिए नोटरी पब्लिक के रूप में नियुक्त किया गया था और उनका नाम नोटरी के रजिस्टर में क्रम संख्या 114 पर प्रविष्ट किया गया था ;

और क्योंकि श्री शक्ति चन्द चौहान ने न ही व्यवसाय प्रमाणपत्र के नवीकरण के लिए आवेदन किया है और न ही नोटरी अधिनियम, 1952 की धारा 5(2) के अन्तर्गत अपेक्षित विहित फीस जमा की है और व्यवसाय प्रमाणपत्र के नवीकरण की तारीख 31-3-2006 को समाप्त हो चुकी है। उन्होंने अपना नाम नोटरी के रजिस्टर से हटाए जाने का अनुरोध किया है ;

और क्योंकि श्री शक्ति चन्द चौहान ने अपना व्यवसाय प्रमाणपत्र समर्पित कर दिया है और उन्होंने अपना नाम नोटरी के रजिस्टर से हटाए जाने का अनुरोध किया है।

अतः हिमाचल प्रदेश के राज्यपाल, नोटरी अधिनियम, 1952 की धारा 10(क) के साथ पठित नोटरी नियम, 1956 के नियम 13 (13) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री शक्ति चन्द चौहान का नाम नोटरी के रजिस्टर से तुरन्त हटाए जाने का आदेश देते हैं।

आदेश द्वारा,

हस्ताक्षरित/-
प्रधान सचिव।

[Authoritative English text of this Department Notification No. L.R-E (3)10/2005-Leg., dated 16th September, 2006 as required under clause (3) of the Article 348 of the Constitution of India].

LAW DEPARTMENT

ORDER

Shimla-2, the 16th September, 2006

No. L.R-E (9)-10/2005-Leg.—Whereas Shri Shakti Chand Chauhan was appointed as Public Notary for Hamirpur district vide this Department Notification No. L.R-E (9)6/98-Leg., dated 18-3-2000 and his name was entered at Serial No. 114 of Register of Notaries;

And whereas Shri Shakti Chand Chauhan has neither applied for the renewal of certificate of practice nor deposited the prescribed fee required under section 5(2) of Notaries Act, 1952 and the date of renewal of Certificate of Practice has expired on 31-3-2006;

And whereas Shri Shakti Chand Chauhan has surrendered his certificate of practice and he has made a request to remove his name from the Register of Notaries.

Now, therefore, the Governor of Himachal Pradesh in exercise of powers conferred by section 10 (a) of the Notaries Act, 1952 read with rule 13(13) of the Notaries Rules, 1956 is pleased to order the removal of the name of Shri Shakti Chand Chauhan, Notary Public, Hamirpur from the Register of Notaries with immediate effect.

By order,

Sd/-
Principal Secretary.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 31st August, 2005

No. Shram (A) 7-1/2005.—In exercise of the powers vested in him under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Dharamshala/Shimla of the following cases in the H. P. Rajpatra :—

Sl. No. & Case No.	Title of the case
1	2
19. Ref. 47/2001 RBT. No. 397/04.	Sunku Ram & Others Vs. Secretary, HPSEB, Shimla and Others.
20. RBT. No. 245/04	Kewal Krishan Vs. Vice Chancellor, Guru Nanak Dev University, Amritsar (Pb.) and Others.
21. Ref. 15/1999 6-1-2005.	Smt. Rano Devi Vs. M/s Sidhartha Steel Deoghat, District Solan.
22. Ref. 33/2001 5-7-2005.	Shri Mani Ram Vs. XEN, H. P. P. W. D. (H&R) Division Rajgarh, District Sirmaur.
23. Ref. 50/2002 8-6-2005.	Brahm Dutt Vs. XEN, IPH Division Solan, Himachal Pradesh.
24. Ref. 227/2002 30-7-2005.	Shri Krishan Mohan Chadda Vs. M. D. Himachal Tin Printers Pvt. Ltd. Delhi & Others.
25. Ref. 344/2003 12-7-2005.	Shri Hari Chand Vs. XEN, N. H. Div., H. P. P. W. D., Solan.

1	2
26. Ref. 345/2003 12-7-2005.	Amar Singh Vs. XEN, N. H. Division, H. P. P. W. D., Solan.
27. Ref. 346/2003 12-7-2005.	Balbir Singh Vs. -do-
28. Ref. 347/2003 12-7-2005.	Ratti Ram Vs. -do-
29. Ref. 21/2003 25-7-2005.	Ratti Ram Vs. D. F. O. Renuka, District Sirmaur.
30. Ref. 106/03 29-7-2005.	Babu Singh Vs. M/s Deepak Cosmo Ltd. Ram Baza, Road Najagarh, District Solan.
31. Ref. 60/04 29-6-2005.	Yadvinder Sharma Vs. XEN, IPH Division, Solan.
32. Ref. 142/04 17-6-2005.	Himachal Hotel Mazdoor Lal Jhanda Union Vs. M/s Toshali Royal View Resort, Shiloh Bag, P. O. Mundaghat, District Shimla.
33. Ref. 47/2005 29-6-2005.	Jagdish Chand Vs. The Convener/President, Community Development Cell, Government Polytechnic College Rohru, District Shimla & Others.
34. Ref. 146/99 22-7-2005.	Jagdish Chand Sharma Vs Principal, GGDSD College, Subathu, District Solan.
35. Ref. 252/05 RBT. 102/04.	Manohar Lal Vs. Himachal Carbon Pvt. Ltd. Sansapur Terrace, District Kangra.

By order,

Sd/-
Secretary.

Certified copy of Award Dated 14-7-05 Passed by Shri George, Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, Himachal Pradesh

Reference No. : 47/01 (RBT No. 397/04)
Date of presentation : 10-4-2001
Date of award : 14-7-2005.

1. Sunku Ram son of Shri Chanchal Ram, r/o V. P. O. Ropri, Kalehroo, Tehsil Jogindernagar, District Mandi, Himachal Pradesh.
2. Rajinder Kumar son of Late Shri Hem Singh c/o Shri Parma Ram, r/o Village Konsal, P. O. Bassi, Tehsil Jogindernagar, District Mandi, Himachal Pradesh.
3. Shri Sher Singh son of Funiya Ram, r/o Village Manoh, P. O. Bassi, Tehsil Jogindernagar, District Mandi, Himachal Pradesh.
4. Satyagar Singh son of Jawahar Singh, r/o Village Kunduni, P. O. Bassi, Tehsil Jogindernagar, District Mandi, Himachal Pradesh.

.. Applicant.

Vs.

1. The Secretary, Himachal Pradesh State Electricity Board, Vidyut Bhawan, Shimla.
2. The Resident Engineer, H. P. S. E. B., Bassi, Power House, Jogindernagar, District Mandi, Himachal Pradesh

.. Respondents

Reference Under section 10 of the Industrial Disputes Act, 1947,

For the petitioners : Shri N. L. Koundil, A. R.

For the respondent : Shri J. S. Chauhan, Adv.

AWARD

The following reference has been received from the appropriate Govt. for adjudication

“क्या नियुक्ता प्रांतीय अभियन्ता हि० प्र०, राज्य विद्युत बोर्ड, बस्ती पावर हाउस, जगिन्दरनगर, जिला मण्डी द्वारा सर्वश्री सत्यागर सिंह, राजेश कुमार, शेर सिंह और सुकु राम देविक भोगी बेलदारों की संवर्ग प्रौद्योगिक विवाद अधिनियम, 1947 की धारा 25 (एच) या 26 (एन) की अनुपालना किये बगैर समाप्त करना वैध है मथवा अवैध और यदि अवैध है तो कामगार किस सेवा लाभ के हकदार हैं ?”

2. The petitioners filed statement of claim, wherein they averred that petitioner Sunku Ram was appointed as Beldar in H. P. S. E. B. Bassi and he worked w. e. f. 22-4-1995 to 15-4-1996 and thereafter his services have been engaged in H. P. S. E. B., Maintenance Bassi power house and he worked as such till 15-3-1998. Petitioner Rajinder Kumar worked in H. P. S. L. B. Bassi w. e. f. 17-8-1994 upto 25-10-1994, as Beldar. The petitioner Rajinder Kumar was again re-engaged after one month break w. e. f. 29-12-1994 to 25-3-1995. Petitioner Sher Singh was appointed as Beldar with the respondent w. e. f. 11-5-1994 to 31-5-1994 and the services of the petitioner were terminated on 1-6-1995 without following the procedure as laid down under the provisions of Standing Orders of the H. P. S. E. B. and services of the petitioner Sher Singh were again re-engaged on 15-1-1998 after four years and he worked upto 14-2-1998, and thereafter the services of the petitioner Sher Singh were terminated by the respondent. Petitioner Satyagar Singh was appointed by the respondent w. e. f. 4-3-1994 till 31-5-1994 and thereafter on 1-6-1994 the services of the petitioner Satyagar were terminated by the respondent and he was again re-engaged on 1-8-1994 and he worked as such till 30-9-1994 as Beldar. Petitioner Satyagar stated that he was again re-engaged by the respondent on 25-2-1995 and he worked as beldar till 26-3-1995. Thereafter petitioner Satyagar again re-engaged w. e. f. 1-7-1996 to 31-8-1996. The services of the petitioner Satyagar were terminated without following the proper procedure on 1-9-1996. The petitioner further stated that they worked as daily waged beldar with the respondent in different dates and their services were terminated by the respondent without any rhyme and reason. The petitioners averred that their services have been illegally terminated by the respondents without following the procedure and violated the Standing Orders clause 14(2). The petitioners further stated that the persons juniors to them were retained in service by the respondent and therefore, the respondent has violated the principle of last come first go within the meaning of sections 25-G and 25-H of the Industrial Disputes Act. The petitioners have prayed for their reinstatement with full back wages and continuity of service alongwith other consequential benefits.

3. The claim, of the petitioners was resisted and contested by the respondents. They filed reply to the claim statement wherein the respondents raised preliminary objections *qua* maintainability, cause of action, on merits, the respondents admitted that the petitioners were engaged as per the dates they have mentioned in the claim petitioner but they used to work in a very casual manner. It is denied that the services of the petitioners were terminated by the respondents. However they left the job at their own. As far as the allegation of retaining the juniors is concerned the respondents stated that the juniors had to retain as per the direction of the Hon'ble Tribunal. The respondents have prayed for dismissal of the petition with costs.

4. The petitioners filed rejoinder wherein they reinstated and re-affirmed the averments as made in the petition and denied the assertions of the respondents as made in the reply :

5. On the respective assertions of the parties, the following issues were framed on-17-7-02:

1. Whether the termination of the services of the petitioner by the Resident Engineer H. P. S. E. B.,

Bassi Power House, Jogindernagar, is in violation of Section 25-H and N of the Industrial Disputes Act, 1947, and thus is illegal and were unjustified ?

OPP.

2. In case issues No. 1 is proved in affirmative to what service benefits the petitioners are entitled to ?

OPP.

3. Relief.

6. For the reason to be recorded hereinafter my issue-wise findings are as under:

Issue No. 1 .. Yes.

Issue No. 2 .. Decided accordingly.

Issue No. 3 (relief) .. The petitioner is allowed as per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 & 2 :

7. Both these issues being interconnected are taken up together for discussion and findings.

8. Out of the four petitioners, three have examined themselves in support of their claim petition. Satyagar Singh petitioner No. 4, appeared as PW-1, Rajinder Kumar, petitioner No. 2 appeared as PW-2, Sher Singh, petitioner No. 3 appeared as PW-3, whereas Sunku Ram petitioner No. 1 has not stepped into the witness box. Satyagar Singh, while appearing as PW-1 has stated that he joined the employment of the respondent as daily waged Beldar in Bassi Power House w. e. f. 4-3-1994, and he worked as such upto 31-8-1996. He was disengaged by the respondent w. e. f. 1-9-1996 in violation of the rules framed as per Certified Standing Order without any notice and retrenchment compensation, despite the fact that work was available. He was also given fictional breaks by the respondent and fresh Beldars were also engaged namely Jagdish, Sudama, Pritam and Chanchal etc. after his disengagement without affording him any opportunity of his preferential rights of employment. He continued to approach the authority for his re engagement but without any result.

9. Similar facts have been deposed by Rajinder Kumar (PW-2) with a difference that he was employed by the respondent on 17-8-1994, and he worked upto 25-3-95 and he was retrenched w. e. f. 26-3-1995.

10. Sher Singh petitioner while appearing as PW-3 has also stated the same facts with a difference that he was engaged on 11-5-1994 and he worked upto 14-2-98, and he was disengaged w. e. f. 15-2-1998. All other facts as stated by Satyagar Singh (PW-1), also supported by Rajinder Kumar (PW-2) and Sher Singh (PW 3) on oath respectively. In their cross-examination they admitted that they worked as per mandays chart brought on the record by the respondent, and they could not complete 240 working days during the aforesaid period for the reason that they were given breaks in service by the respondent. They were also put to the suggestions that they abandoned the job at their own and they did not approach the authority for their re-engagement to which they replied in the negative. Rather, they asserted that S. D. O. told them that the old workers were filing cases in the court if they would resort to their recruitment;

11. In respect of petitioner No. 1 Sunku Ram, though he has not appeared in the witness box but as per his statement of claim he pleaded that he was appointed by the respondent w. e. f. 22-4-1995 to 15-4-1996 and also thereafter from 16-4-1996 as daily waged Beldar and he worked upto 15-3-1998, thereafter he was disengaged by the respondent without any notice and payment of compensation.

12. The respondent in their reply to the statement of claim of Sunka Ram petitioner have pleaded as under:-

“The applicant Shri Sunka Ram was engaged on muster roll as Beldar on daily wages against

civil works of Bassi Power house which were casual in nature and remained engaged as such w. e. f. 16-4-1996 to 25-6-96 and 30-9-96 to 25-12-1996 in the 1st and second spell he worked only 64 days and 87 days only and again re-engaged on 3rd spell w. e. f. 6-1-1997 to 25-3-1997 and 4th spell 26-11-1997 to 15-3-1998 with interruption. However, he used to attend his duty in a very casual manner. The detail of his working days is annexed as annexure R-1".

13. It is an admitted fact that none of the four petitioners has completed 240 working days in the last preceding 12 months as is apparent from mandays chart in respect of each of the petitioner annexure RA-1 to RA-4, which have been brought on the record. It is an admitted fact that in the present case section 25-F of the Industrial Tribunal Act is not applicable. However, the service of the each petitioner were liable to be dis-engaged by the respondent after following the procedure as laid down under section 14.2 of the standing orders framed under the Industrial Employment (Standing Order) Act, 1946 with respect to all workman employed in the Industrial Establishment and covered under the Factory Act, 1948 of respondent No. 1. Rule 14.2 of the said Standing Orders provides method of termination of workman employed by the respondent No. 1 and according to sub-rule 2, in those cases which are not covered by sub-clause (i) services of a worker with less than one year of service are terminable by giving ten days notice in writing or pay and allowance in lieu of such notice, even without assigning any reason be either side, by the party on whom notice is served. Rule 14 of the said Standing Order reads as follows:

Rule 14 :

"No workman who has been in the continuous service of the H. P. S. E. B. for not less than one year as defined in the Industrial Disputes Act 1947 shall be retrenched until he has been given one month's notice in writing indicating the reasons for such retrenchment and the period of notice has expired or he has been paid in lieu of such notice, wages for the period of notice, for such period as the notice falls short or one month. And further in this behalf principle of first come last go will be observed. Retrenchment compensation will be payable according to the provisions of the Industrial Disputes Act, 1947.

Explanation :

For the purpose of this clause retrenchment means termination by the H. P. S. E. B. of the services of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include :

- (a) voluntary retirement of the workman or
- (b) Retirement of the workman on reaching the age of superannuation which shall ordinarily be 58 years but can be extended upto 60 years with the sole discretion of management, or
- (c) Termination of service of workman on grounds of continued ill health;
- (d) Termination by way of punishment inflicted pursuant to disciplinary action.

(2) In those cases which are not covered by sub-clause (i) services of a worker with less than one year's service terminable by giving ten days notice in writing or pay and allowance in lieu of such notice even without assigning any reason by either side by the party, issuing the notice to the party on which the notice is served. In case of short notice an amount equal to the pay and allowance for the period for which notice falls short of the required period shall be payable by part serving the notice, to other party. In case of workman with more than one years service

30 days notice will be required. However, no notice is required to be served on a workman for terminating his employment where:

- (a) A workman is engaged for a specific period not exceeding one year's continuous employment on one or more spells and in one or more trade;
 - (b) An adverse report is received on his character and antecedents from the police or civil authorities;
 - (c) He attains the age of superannuation.
 - (d) He is convicted on a criminal charge by a court of law.
 - (e) It is not expedient in the interest of the security of the State to retain him in service.
 - (f) He is declared medically unfit or he fails to appear before the appropriate medical authority (appointed for the purpose by the employer) for medical examination when called upon to do by any person authorised in this behalf;
 - (g) He is dismissed, removed or discharged from the service as a measure of punishment.
- The executive Engineer shall maintain a waiting list of all temporary workman whose service have been terminated on account of the completions of the work for which they were appointed or on account of the expiry of the period for which they were employed containing the following particulars namely:

- (i) Their names and addresses;
- (ii) The name of the work and nature or occupation in which they were employed.
- (iii) The wages paid to them during employment ; and
- (iv) the dates of termination of their services."

2. Wherever any vacancy in the Establishment is required to be filled, the persons, included in the waiting list maintained under sub-clause, (i) (a) shall be given preferences after taking into consideration the nature of work done by them while in employment or the occupation in which they were employed and on the basis of the aggregate of their services in the Establishment prior to the termination of their services. No person whose name is not entered in the waiting list shall be appointed in the Establishment unless all persons included in that list have been provided with employment in the Establishment.

- (h) He is appointed in a regular post.
- (i) He absents himself or does not resume duty on the expiry of his leave.
- (j) He is an apprentice".

14. From the evidence of the petitioner as well as respondent, it appears that the respondents have lost sight of the rules 14, of the Standing Orders and the respondents have concentrated only for the non-applicability of section 25-F of the Act. The claim of the respondents that the petitioners had voluntarily abandoned their job and they were not in fact, retrenched by the respondents, appears to be without any substance for the reason that none of the respondents, has come to step into the witness box. One Shri Rattan Lal. Rawat, Asst. Engineer, Maintenance Sub-Division, Bassi Power House, appeared as RW-1, who joined the Bassi Power House on 1-6-2005. Admittedly he was not posted in sub-division Bassi Power House, at the time when all the four petitioners were engaged and they were dis-engaged. Statement of RW-1 R. L. Rawat, proves that the petitioners were not diligent in attending

their work and they used to remain absent and they were infact not abandoned, rather they abandoned the job, this plea appears to be without any substance. Since he was not posted and this fact can only be proved by any of the officers, who were infact incharge of the petitioners at the time of their engagement. Rather the statement of Shri R. L. Rawat as RW1 supports the statements made by the three petitioners as referred to above, that after their engagement they were given breaks in their service by the respondents as Shri Rattan Lal Rawat while appearing as RW1 has admitted in his cross-examination that the petitioners were given breaks due to the reason for non-availability of the work, as such, the stand taken by the respondents that the petitioners infact were not dis-engaged and that they abandoned the job, is not proved. The fact of abandonment is a question of fact burden of proving the same lies on the respondents and the respondents have not examined any witness of the relevant time to prove the same.

15. From the perusal of sub-rule (2) of rule 14 of the Standing orders as referred to hereinabove, since none of the four petitioners, were given any required notice before their disengagement, therefore, retrenchment of all the four petitioners, appears to be violative of sub rule 2 of rule 14 of the Standing Orders and as such liable to be set aside.

16. It also appears from the statements of all the three petitioners S Shri Satyagar Singh, Rajinder Kumar and Shri Sher Singh, PW 1, PW 2 and PW3 respectively, have stated that after their dis-engagement new persons namely Jagdish Chand, Sudama, Pritam and Chanchal and others were engaged by the respondents without affording any opportunity to any of the four petitioners to exercise their preferential right of employment. This aspect of the case is not disputed in the cross-examination of those three witnesses. Section 25-H of the Act, reads as under:—

“Re-employment of retrenched workmen: Where any workmen are retrenched and the Employer proposes to take into his employ any person, he shall, in such manner as a may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment shall have preference over other persons”.

17. Shri Rattan Lal Rawat, while appearing as RW1 has not disputed that Shri Jagdish, Sudama, Pritam and Chanchal were not engaged by the respondent after the disengagement of the petitioner and that before their engagement, any opportunity was given to any of the petitioners to exercise their preferential rights of employment, as per the principle laid down under section 25-H of the Act, as referred to hereinabove. Rather Shri Rattan Lal Rawat, while appearing as RW1 has named some new persons namely Birbal, Parkash Chand, Basant and others and instead of that the have been engaged as per order of the Administrative Tribunal but this fact has lost its relevance for the reason that the persons named by the petitioners in their statements, after their dis-engagement is not disputed or controverted, either in the cross-examination of the petitioners or in the positive evidence of the respondent i. e. in the statement of Shri Rattan Lal Rawat (RW1) and therefore, it also appears that the respondents have violated the mandatory requirement of section 25-H of the Act.

18. It has been argued on behalf of the respondents that since Sunku Ram petitioner No. 1, has not stepped into the witness and therefore, no relief can be given to him, as there is no legal evidence on the record to support the claim of petitioner Sunku Ram. I have taken into consideration the arguments put forwarded by the respondents. After taking into consideration the entire pleadings and other documentary evidence of the parties, available on the record, Shri Sunku Ram in his claim has pleaded the certain facts as referred to above which have been refuted to by the respondents. It is not disputed by the respondents that Shri Sunku Ram was not engaged

on muster roll as Beldar on daily wages by the respondents. According to the respondents, Sunku Ram remained engaged as such w. e. f. 16-4-1996 to 25-6-1996, 30-9-96 to 25-12-1996 in the first and second spell and he worked only for 64 days and 87 days and he was again engaged w. e. f. 6-1-1997 to 25-3-1997 in the third spell and he worked in the Fourth spell w. e. f. 26-11-1997 to 15-3-98, without interruption. The respondents have also brought on the record mandays chart annexure RA/1 which reveals that Shri Sunku Ram remained working with the respondents, for the period as mentioned above. The respondents have not brought any cogent, and convincing evidence on the record to prove that the services of the petitioner Sunku Ram were not disengaged by the respondents, rather he himself abandoned the job. It is also an admitted fact that the respondents have not followed the procedure as laid down on sub-rule 2 of rule 14 of the certified Standing Orders, therefore, the facts admitted by the respondents in their reply are sufficient to conclude that the services of the petitioner Shri Sunku Ram were dis-engaged by the respondents in violation of the mandatory requirement of Certified Standing Order, as such the disengagement of the petitioner Sunku Ram, is also improper and unjustified.

19. Having regard to the facts, circumstances and evidence of the parties, and the position of law, as is emerging from the rule 14(2) of the Certified Standing Order and also section 25-H of the Industrial Disputes Act, the disengagement of the petitioners, appears to be improper illegal and unjustified. The petitioners are accordingly, held to be entitled for their re-engagement on the same terms and conditions in which they were working earlier with all services benefits except payment of backwages. Both issues No. 1 and 2 are decided in favour of the petitioners and against the respondents.

RELIEF

20. In view of my findings on issues No. 1 & 2 above, the disengagement of the petitioners by the respondents, is illegal and unjustified. The petitioners are entitled for their reinstatement on the same terms and conditions as their original services in which they were working earlier to their retrenchment, with all consequential service benefits, except payment of backwages. The respondents are directed to re-engage the petitioners within 90 days from to day, i. e. 14-7-2005, failing which the petitioners shall be entitled to their full back wages.

21. Let a copy of this award to sent to the appropriate government for publication in the official gazette. The file after completion be consigned to record room.

Announced,
14-7-2005.

Seal.
GEORGE,
Presiding Judge,
H. P. Labour Court-cum-Industrial Tribunal,
Dharamshala, Himachal Pradesh.

अम विभाग

अधिसूचना

निम्न-1, 18 अगस्त, 2005

संख्या 11-5/99 (नैब0) घाट0 डी0 भाग-चम्बा.—प्रधोहस्ता-
शरी को यह प्रतीत होता है कि श्री केवल कृष्ण सुगुप्त श्री शोभ राय,
गांव बेरोनी, शाकबाना डलहौजी, जिला चम्बा (हि0 प्र0) तथा
1. उप-मूल गति, गुरु नानक देव युनिवर्सिटी, अमृतसर, पंजाब,
2. कार्यकारी प्रभियंता, इन्जीनियरिंग विभाग, गुरु नानक देव
युनिवर्सिटी, अमृतसर, पंजाब के महंग नीचे दिए गए विषय पर
प्रौद्योगिक विवाद है;

प्रौद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के
अधीन समझौता अधिकारी द्वारा प्रदत्त की गई रिपोर्ट पर उक्त अधि-
नियम की धारा 12 की उप-धारा (5) के अधीन विचार करने के

उपरोक्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/ औद्योगिक अधीकरण को अधिनियम के लिए भेजने योग्य है।

धन: हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या 19-8/89-श्रम (वृत्त), दिनांक 7 सितम्बर, 1992 द्वारा प्रदत्त शक्तिवश का प्रयोग करते हुए अधोहस्ताक्षरी, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप-धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करने हुए एतद्वारा इस मामले को उक्त अधिनियम की धारा 7 के अधीन गठित श्रम न्यायालय/ औद्योगिक अधीकरण, हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनियम देने के लिए भेजा जाता है:—

“क्या श्री केवल कृष्ण सपूज श्री जॉन्स राम, गांव बेगीनी, डाकघाना डनहोजी, जिला रुम्हा को (1) उप कुलपति, गुरु नानक देव यूनिवर्सिटी, अमृतसर, पंजाब, (2) कार्यकारी अभियन्ता, इंजीनियरिंग विभाग, गुरु नानक देव यूनिवर्सिटी, अमृतसर, पंजाब द्वारा दिनांक 17-5-2001 से मोकरी स निकाने की कार्यवाही उचित है? यदि नहीं, तो कामगार किम एवं वेतन, पूर्व सेवा लाभ, बरिफ्टना और राहत का पात्र है?”

Present : Shri D. S. Thakur, Adv. for the petitioner.
26-7-2005 : Shri Tilak Singh, Adv. for the respondent.

Shri Tilak Singh, Adv. for the respondent has stated before the Court that the matter can be amicably settled as he has been authorised by the respondent to make a statement before the Court to the effect that if the petitioner is ready to join as Chowkidar purely on *ad hoc* basis without claiming any back wages till date, the respondent is ready to employ the petitioner as Chowkidar. Statement of Shri Tilak Singh, Adv. for the respondent recorded in which he has reiterated the same facts as has been referred to hereinabove. Statement of petitioner Kewal Krishan also recorded whereby the petitioner has accepted the offer.

In view of the statements of the Id. counsel for the respondent and petitioner, the respondent is directed to employ the petitioner, as per statement made by Shri Tilak Singh Adv. for the respondent, the petitioner shall not be entitled for any backwages. However, the petitioner shall be entitled for all other consequential service benefits i. e. period between 10-5-2001 to 26-7-2005. The petitioner shall make present himself for his appointment w. e. f. 27-7-2005.

Copy of this award be supplied to the parties on usual terms. Statements made by Shri Tilak Singh, Adv. for the respondent as well as petitioner, shall from part of this award. The reference is answered accordingly.

A copy of this award be sent to the appropriate Government for publication in the official gazette. The life after completion be consigned to record room.

Announced.
26-7-2005.

Seal.

GEORGE
Presiding Judge,
H. P. Labour Court-cum-Industrial Tribunal,
Dharamshala, Camp at Dalhousie (H. P.).

Kewal Krishan Vs. Vice Chancellor G. N. D. University. Statement of Shri Tilak Singh. Advocate for the respondent.

Stated that I have been authorised by the respondent Vice Chancellor Guru Nanak Dev University, Amritsar vide letter Ex. P-1 to settle the dispute amicably with the petitioner. The respondent is ready to appoint petitioner Kewal Krishan as Chowkidar purely on *ad hoc* basis without payment of backwages till date. In case the offer is acceptable to the petitioner the Hon'ble Court may dispose of the matter accordingly.

R. O. & A. C.

Seal.

GEORGE,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Dharamshala (H. P.).

Statement of Shri Kawal Krishan petitioner son of Shri Shobha Ram aged 32 years, resident of Village Bharini, P. O. D Housie, District Chamba, Himachal Pradesh.

O. N. S. A.
26-7-05.

Stated that I have heard the statement of the Id. counsel for the respondent as referred to above, and I am ready to accept the offer.

R. O. & A. C.

Seal.
GEROGE,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Dharamshala (H. P.).

Certified Copy of Award dated 14-7-05 passed by
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Shimla, Himachal Pradesh

Ref. No. 15/99
Smt. Rano Devi

Versus

M/s Sidhartha Steel Deoghat, District Solan, Himachal Pradesh.

6-7-2005

Present : None.

Case called repeatedly in pre and post Lunch sessions. But none has appeared. It is already 3.00 p. m. Hence the petition is dismissed for want of prosecution. Accordingly, the reference is answered in negative. Let a copy of this order be sent to the appropriate Government for publication in the official Gazette.

Seal.

Sd/-
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge, H. P. Labour Court, Shimla

Ref. No. : 33 of 2001
Instituted on : 21-3-2001
Decided on : 5-7-2003

Mani Ram s/o Late Shri Matha Ram, Village Dhar, P. O. Salog, Tehsil Thog, District Shimla, Himachal Pradesh
.. Petitioner.

Versus

Executive Engineer, H. P. P. W. D. (B&R) Division
Rajgarh, District Sirmour, Himachal Pradesh
.. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C. Bhardwaj, AR.
For respondent : Shri S. R. D. Kaushik, AR.

AWARD

The following reference has been received for adjudication from the appropriate government :—

“Whether the termination of services of Shri Mani Ram s/o Late Shri Matha Ram by the Executive Engineer, H. P. P. W. D. (B&R) Division, Rajgarh, District Sirmour, Himachal Pradesh on completion of 240 days' service by the workman and without giving any notice or notice pay and without conducting the enquiry is legal.

If not, what relief and compensation workman is entitled to?"

Issue No. 3

No

Relief

Reference answered in favour of petitioner *vide* operative part of the award

REASONS FOR FINDINGS

Issue No. 1

8. The State Government has made a reference to this Court for adjudication whether the termination of services of Shri Mani Ram s/o Late Shri Matha Ram by the Executive Engineer, H. P. P. W. D. (B&R) Division, Raygarh, District Sirmour, Himachal Pradesh on completion of 240 days service by the workman and without giving any notice or notice pay and without conducting the enquiry is legal. If not, what relief and compensation workman is entitled to.

2. In his statement of claim petitioner Mani Ram has alleged that he was engaged by the respondent in the month of January, 1988 as Beldar and continued as such till 26-11-1992 when his services were illegally terminated without any cogent reason and justification. It is alleged that petitioner has completed more than 240 days in each year of service tenure and remained employed for 291 days, 342 days, 355 days and 291 days during the years 89,90,91 and 92 respectively. It is also alleged that during the entire service tenure, the work and conduct of the petitioner was excellent and the petitioner was never served with any explanation, warning, show cause notice or charge-sheet nor any enquiry was conducted against him. It is also alleged that the respondent failed to comply the mandatory provisions of Section 25-N of the Industrial Disputes Act, 1947 (the 'Act') nor any retrenchment compensation was paid and the retrenchment is without prior approval of the appropriate government. Lastly, it is alleged that petitioner never abandoned the employment and at the time of his retrenchment, the services of junior workmen were retained and the petitioner was never re-called for re-engagement despite the petitioner having approached the concerned authorities number of times and thus the practice adopted by the respondent department amounts to unfair labour practice and is violative of Articles 14 and 16 of the Constitution of India. The petitioner has prayed for his re-instatement *w. e. f.* his illegal retrenchment *i. e.* on 26-11-1992 with full back wages, seniority and other consequential benefits like regularization.

9. Admitted facts are that the petitioner remained employed as Beldar on daily wages with respondent as per details of mandays chart appended with the reply of the respondent. Thus, the petitioner remained employed for 93 days in the year, 1988, 291 days in the year, 1989, 342 days in the year, 1990, 353 days in the year, 1991 and 261 days in the year, 1992. Admittedly the petitioner remained employed for more than 240 days preceding to his retrenchment. It is also admitted case of the parties that no notice was served upon the petitioner nor any wages in lieu of notice and retrenchment compensation was paid to the petitioner. The stand of the respondent is that the petitioner abandoned the job himself. However, there is no *iota* of evidence to substitute such a plea.

3. The respondent resisted and contested the statement of claim and in their join reply raised preliminary objection that the claim is not maintainable in the present form and the claim is barred by limitation. Further that the respondents are not employer within the meaning of Section 2 (g) of the 'Act'. On merits, it is admitted that petitioner worked *w. e. f.* January, 1988 to November, 1992 *i. e.* for 93 days in the year, 1988, 291 days in the year, 1989, 342 days in the year, 1990, 353 days in the year, 1991 and 261 days in the year, 1992 as per detail of mandays given in Annexure R-1 and left the job of his own will without any intimation in writing or verbal to the department. It is also alleged that services of the petitioner were not terminated retrenched by the respondent and the petitioner never approached the department for redressal of his grievances at any stage and that no junior person has been retain and no fresh recruitment of daily waged beldar has been made by the respondents and lastly that the petitioner has come to the Court by concealing material facts.

10. While appearing as PW-1, the petitioner has deposed that he joined the respondent department as daily waged Beldar in January, 1988 and worked as such continuously for about 5 years when he was retrenched *w. e. f.* 26-11-1992, and that he had completed service of more than 240 days during the above period and he was retrenched without any notice and compensation. In his cross-examination, the witness has stated that he had left the job of his own and he was told that he would be re-engaged as and when the work was available.

11. In rebuttal, Shri S. R. D. Kaushik has deposed that petitioner had left the job of his own. In his cross-examination, the witness has admitted that no written notice or any communication was even served upon the petitioner nor any compensation was paid to him.

12. The provisions of Sections 25-F and 25-N of the 'Act' reads as under:

4. On the pleadings of the parties, the following issues were framed:—

25-F. *Conditions Precedent to retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

1. Whether the termination of services of the petitioner is violative of Section 25-F of the Industrial Disputes Act, 1947 and is illegal and unjustified? **OPP.**
2. Whether the petition is not maintainable in view of preliminary objections No. 1 & 3? **OPR.**
3. Whether the petition is barred by limitation? **OPR.**
4. Relief. **OPR.**

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen day's average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate government by notification in the Official Gazette).

5. In support and to prove the case, the petitioner stepped into the witness box as PW-1 and in rebuttal Shri S. R. D. Kaushik, Additional Assistant Engineer was examined on behalf of the respondents.

6. I have heard the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

FINDINGS

Issue No. 1	Yes
Issue No. 2	No

13. In view of above discussion and taking into consideration the evidence on record and the above mentioned provisions of the 'Act', it is held that the termination of services of petitioner by respondents *w. e. f.* 26-11-1992

on completion of more than 240 days continuous service and without any notice, charge-sheet, enquiry and compliance of the provisions of section 25-F of the 'Act' is illegal and unjustified. Accordingly, Issue No. 1 is decided against the respondent and in favour of the petitioner.

Issue No. 2 & 3 :

14. Onus to prove these issues is on the respondent who has not adduced any evidence in support of these issues. Moreover, there is nothing on record to support the contention that the petition is not maintainable and is barred by limitation. Accordingly, Issue No. 2 & 3 decided against the respondent.

RELIEF

15. As a sequel to my findings on Issue, No. 1 to 3 above, reference is answered in favour of the petitioner and against the respondent. The respondent is directed to re-instate the petitioner with seniority and continuity in service. However, the petitioner shall be entitled to back wages to the extent of 25% from the date of reference i.e. w. e. f. 14-3-2001. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the Open Court today this 5th day of July, 2005.

Announced.

D. D. SHARMA.

Presiding Judge.

Seal.

H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Labour Court, Shimla

Ref. No. .. 50 of 2002

Instituted on .. 4-2-2002

Decided on .. 8-6-2005.

Brahm Dutt s/o Shri Badri Dutt, C/o Shri J. C. Bhardwaj, General Secretary, A. I. T. U. C. Sapruon, Solan .. Petitioner.

Versus

The Executive Engineer, I & PH Division, Solan, District Solan, Himachal Pradesh .. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner .. Shri J. C. Bhardwaj, A. R.
For respondent .. Ex-parte.

AWARD

1. The following reference has been received for adjudication from the appropriate government:—

“Whether the termination of Shri Brahm Dutt s/o Shri Badri Dutt workman w. e. f. 1-5-97 by the Executive Engineer, I & PH Division, Solan without complying with Section 25-F and 25-N is legal and justified? If not, to what seniority, service benefits and relief the concerned workman is entitled to?”.

2. In his statement of claim, the petitioner has alleged that he was engaged by the respondent in the month of November, 1987 and continued till his illegal termination on 1-5-1997. It is alleged that the petitioner has completed more than 240 days of service in each year of service tenure and his disengagement is without compliance of statutory and mandatory provisions of law such as serving of three months notice or payment of wages in lieu thereof, payment of retrenchment compensation and

prior approval of the appropriate government. It is also alleged that during his 10 years service, the petitioner was never served with any explanation, show cause notice charge-sheet, warning etc., and his work and conduct always remained excellent and that no domestic enquiry was conducted and thus the retrenchment is illegal, null and void and inoperative and that the petitioner has been condemned unherald. Lastly that the petitioner is entitled for regularization of his services after his re-instatement and also to back wages, seniority and other consequential service benefits.

3. The respondent resisted and contested the statement of claim and in the reply raised preliminary objection that claim is not maintainable as the services of the petitioner was never terminated by the department and that the petitioner abandoned the work of his own. The petitioner failed to report for duty despite letter dated 27-5-1997. On merits, it is admitted that petitioner was engaged at daily wages Chowkidar during November, 1987 and he worked intermittently for 66 days during 1987, 365 days during 1988, 364 days during 1989, 345 days during 1990, 362 days during 1991, 348 days during 1992, 351 days during 1993, 311 days during 1994, 354 days during 1995, 366 days during 1996 and 120 days during 1997 thereafter he stopped coming for his duties w. e. f. 1-5-1997 with his own sweet will and that the petitioner was asked to report for duty vide letter dated 27-5-1997 within 3 days failing which it will be presumed that he is not interested to work with the respondent department. However, the petitioner did not turn up for duty and thus the petitioner left the job of his own volition and there is no question of dispensing with his services by way of retrenchment and thus the provisions of the Industrial Disputes Act, 1947 (the 'Act') are not applicable in the present case and that there is no reason to issue any charge-sheet or hold any enquiry against the petitioner. Lastly, it is alleged that no other person was engaged in place of the petitioner and that the petitioner is not entitled for regularization or any other service benefits.

4. In rejoinder the petitioner repudiated the contentions of the respondent as raised in the reply and reasserted his contention as raised in the claim petition.

5. None appeared on behalf of the respondent on 12-7-2004, hence the respondent was proceeded against ex-parte.

6. On the pleadings of the parties, the following issues were framed :

1. Whether the termination of services of petitioner by respondent w. e. f. 1-5-97 without complying with section 25-F and 25-N is legal and justified? OPR.
2. If Issue No. 1 is not proved, to what relief of service benefits the petitioner is entitled to? OPP.
3. Whether the claim is not maintainable as alleged in preliminary objection? OPR.
4. Relief.

7. I have heard the Authorised representative of the petitioner and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under :

FINDINGS

Issue No. 1	No
Issue No. 2	Entitled for re-instatement
Issue No. 3	No
Relief	Reference answered in favour of petitioner vide operative part of the award.

REASONS FOR FINDINGS

Issue No. 1 :

9. Onus to prove that termination of services of the petitioner without complying the provisions of Sections 25-F and 25-N of the 'Act' is legal and justified is on the respondent, however no evidence was adduced on behalf of the respondent in support of issue. On the other hand, the petitioner has stepped into the witness box as his own witness and deposed that he was employed in the respondent department in the month of November, 1987 and continued till 1-5-1997 when his services were illegally terminated orally without compliance of Section 25-F and 25-N of the 'Act' and that no notice was served nor any wages in lieu of notice were paid to the petitioner. The petitioner further deposed that no retrenchment compensation was paid to him and he had worked for more than 240 days in each year as per mandays chart Annexure RA. According to the petitioner, the respondent has also violated the provisions of Section 25-G and 25-H of the 'Act' as the petitioner worked for more than 10 years and his disengagement is without any show cause notice or charge-sheet. The petitioner has prayed for his re-instatement with back wages, seniority, continuity in services and benefit of regularization.

10. On perusal of Annexure RA appended with the reply of the respondent, it is evident that the petitioner worked for more than 240 days during the years 1988 to 1996 and during preceding 12 months from the date of his removal i. e. 1-5-1987. Admittedly, no show cause notice, charge-sheet was served upon the petitioner nor any enquiry was conducted against him.

11. The provisions of Section 25-F and 25-N of the 'Act' reads as under :

25-F. Conditions Precedent to Retrenchment of workmen.—No workman employed in any Industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

[25-N. Conditions Precedent To Retrenchment of workmen.—(1) No workman employed in any Industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to the Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4) every workman who is employed in that establishment immediately, before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months].

12. In view of above discussion and taking into consideration the evidence on record and the above mentioned provisions of the 'Act', it is held that the

termination of services of petitioner by respondents w. e. f. 1-5-1997 on completion of more than 240 days continuous service and without any notice, charge-sheet, enquiry and compliance of the provisions of section 25-F and 25-N of the 'Act' is illegal and unjustified. Accordingly, Issue No. 1 is decided against the respondent and in favour of the petitioner.

Issue No. 2 :

13. In view of my finding on Issue No. 1 above and the fact that the termination of the services of petitioner is without compliance of Section 25-F and 25-N of the 'Act', the petitioner is entitled for re-instatement. Accordingly, Issue No. 2 is decided in favour of the petitioner.

Issue No. 3 :

14. Onus to prove the issue is on the respondent who has not adduced any evidence in support of the issue. Moreover, there is nothing on record to support the contention that the petition is not maintainable. Accordingly, Issue No. 3 is decided against the respondent.

RELIEF

15. As a sequel to my findings on Issues No. 1 to 3 above, the reference is answered in favour of the petitioner and against the respondent. The respondent is directed to reinstate the petitioner with seniority and continuity in service. However, the petitioner shall be entitled to back wages to the extent of 25% from the date of reference i. e. w. e. f. 22-1-2002. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

Announced in the Open Court today this 8th Day of June, 2005

Seal D. D. SHARMA,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Labour Court, Shimla Camp at Solan

Ref. 227/2002

Shri Krishan Mohan Chadda.

Vs.

M. D. Himachal Tin Printers Pvt. Ltd. Delhi and others.

30-7-2005.—Present : None.

Case called repeatedly in the pre and post lunch sessions but none has appeared on behalf of the parties. It seems that the settlement Ex. C. I. which has been filed by the A.R. of the respondent on 28-7-2005 is agreeable to both the parties. In view of non appearance and settlement Ex. C. I. the reference is answered accordingly. Let a copy of this order be sent to appropriate government for publication.

Announced.

Seal D. D. SHARMA,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Labour Court, Shimla Camp at Solan

Ref. No. : 344 of 2003
Instituted on : 12-12-2003
Decided on : 12-7-2005

Shri Hari Chand s/o Shri Hira Lal c/o Shri Prem Lal
s/o Shri Kul Bahadur, Village and P. O. Kumarhatti,
District Solan .. Petitioner.

Versus

Executive Engineer,
National Highway Division,
H. P. P. W. D. Solan, Himachal Pradesh.
.. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For the petitioner : Shri A. K. Gupta, Advocate.
For the respondent : Ex-parte.

AWARD

The following reference has been received for adjudication from the appropriate government.

"Whether the termination of services of Shri Hari Chand s/o Shri Hira Lal workman by the Executive Engineer, National Highway Division H. P. P. W. D., Solan w. e. f. month July, 2002, without complying with section 25-F and 25-N of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?"

2. In his statement of claim petitioner Hari Chand has alleged that he was engaged as daily waged beldar in September, 2001, and continued as such upto July, 2002 when his services were disengaged without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (the 'Act'). It is further alleged that the petitioner had completed 240 days of service and the principle of last come first go was not followed while disengaging the service of the petitioner and the persons junior to the petitioner are still working in the division and even fresh recruitment has been made after the disengagement of the services of the petitioner and despite efforts by the petitioner for his re-engagement the respondent did not agree and the petitioner was compelled to raise the industrial dispute before the Labour-cum-Conciliation Officer, Solan where the conciliation also failed. Lastly, it is alleged that the disengagement of the petitioner is illegal arbitrary and unjustified and violative of mandatory provisions of Section 25-F and 25-H of the 'Act' which amounts to unfair Labour practice. The petitioner has prayed for a direction to the respondent to reinstate him in service with all benefits including full back wages, seniority etc.

3. Besides petitioner Hari Chand, Executive Engineer, National Highway Division, H.P.P.W.D. Solan is a party. Accordingly notices were issued to the parties. On notice, Shri K. S. Saini, A. R. appeared for the respondent on 22-3-2004 and the next date of hearing was fixed for 16-6-2004 on which date none appeared for respondent and hence the respondent was proceeded against ex-parte.

4. In support and to prove the case, petitioner stepped into the witness box as his own witness and also placed on record photocopy of seniority list Ex. P. A. daily wagers maintained by Assistant Engineer, National Highway Sub-Division, H. P. P. W. D. Dharampur. In his statement, the petitioner has deposed that he was engaged as beldar on daily wages basis in September, 2001 and continued as such upto July, 2002 and no notice was ever served upon him nor any enquiry was conducted against him and his services were orally terminated in July, 2002 without payment of any retrenchment compensation. Accordingly to the petitioner, he had completed more than 240 days. He made repeated requests to re-engage him, but without any result and junior persons namely Naresh, Muni Lal, Nand Lal etc. are still working with the respondent and that work is available with the respondent and even fresh recruitments has been made after his retrenchment. The petitioner has prayed for his re-engagement in service with consequential benefits including back wages, continuity and seniority in service.

5. From the statements on oath of the petitioner coupled with documents Ex. PA. which is copy of seniority list of daily wagers in respect of Sub-Division, Dharampur for which there is no rebuttal, it stands proved that the petitioner was working on daily wages basis as beldar in National Highway Sub-Division of H. P. P. W. D. at Dharampur during the years 2001 & 2002 and had completed more than 240 days during the preceding 12 months before his services were dispensed with.

6. The provisions of Sections 25-F and 25-N of the 'Act' reads as under:

25-F. Conditions precedent to retrenchment of workmen. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

"[25-N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any Industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until.

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such person's permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have granted on the expiration of the said period of sixty days.
- (5) An order of the appropriate Government or the specified authority granting or refusing to grant

permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

- (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order grantings or refusing to grant permission under sub-section (3) or, refer the matter or as the case may be, cause it to be referred to the Tribunal for adjudication;

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

- (7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all benefits under any law for the time being in force as if no notice had been given to him.

- (8) Notwithstanding anything contained in the foregoing provisions of the section the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

- (9) Where permission for retrenchment has been granted under sub-section(3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately, before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months]

7. Admittedly no notice was served upon the petitioner nor any enquiry was conducted before the services were terminated. It has also come on record that no retrenchment compensation was paid to the petitioner.

8. From the oral as well as documentary evidence as discussed herein above. It is proved that there is violation of the provisions of Sections 25-F and 25-N of the 'Act'. Accordingly, it is held that the termination of services of petitioner Hari Chand by respondent *w. e. f.* July, 2002 without complying the provisions of Section 25-F and 25-N of the 'Act' is not proper and justified. Thus the petitioner is entitled to re-instatement in service with seniority and continuity in service. However, he shall be entitled to back wages to the extent of 25% from the date of reference *i. e.* 5-12-2003. Let a copy of this award be sent to appropriate Government for publication in the official gazette.

Announced in the open court today this 12th Day of July, 2005 at Solan.

Seal.

D. D. SHARMA,

Presiding Judge,

H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Industrial Tribunal-cum Labour
Court, Shimla Camp at Solan

Ref. No. : 345 of 2003
Instituted on : 12-12-2003
Decided on : 12-7-2005

Amar Singh s/o Shri Devi Ram, r/o Village & P. O.
Badop, Tehsil and District Solan .. Petitioner.

Versus

Executive Engineer, National Highway Division,
H. P. P. W. D., Solan, Himachal Pradesh .. Respondent.

Reference under Section 10 of the Industrial Disputes
Act, 1947.

For petitioner .. Shri A. K. Gupta, Advocate.
For respondent .. Ex-parte.

AWARD

The following reference has been received for adjudica-
tion from the appropriate Government: -

"Whether the termination of services of Shri Amar Singh s/o Shri Devi Ram workman by the Executive Engineer, National Highway Division, H. P. P. W. D., Solan w. e. f. month July, 2002 without complying with section 25-F and 25-N of the Industrial Disputes Act, 1947 is proper and justified ? If not, what relief of service benefits the above aggrieved workman is entitled to ?".

2. In his statement of claim petitioner Amar Singh has alleged that he was engaged as daily waged beldar in January, 2001 and continued as such upto July 2002 when his services were disengaged without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act). It is further alleged that the petitioner had completed 240 days of service and the principle of last come first go was not followed while disengaging the services of the petitioner and the persons to the petitioner are still working in the division and even fresh recruitment has been made after the disengagement of the services of the petitioner and despite efforts by the petitioner for his re-engagement, the respondent did not agree and the petitioner was compelled to raise the industrial dispute before the Labour-cum-Conciliation Officer, Solan where the conciliation also failed. Lastly, it is alleged that the disengagement of the petitioner is illegal, arbitrary and unjustified and violative of mandatory provisions of Section 25-F and 25-H of the 'Act' which amounts to unfair labour practice. The petitioner has prayed for a direction to the respondent to re-instate him in service with all benefits including full back wages, seniority etc.

3. Besides petitioner Amar Singh, Executive Engineer, National Highway Division, H. P. P. W. D. Solan is a party. Accordingly notices were issued to the parties. On notice, Shri K. S. Saini, A R appeared for the respondent on 22-3-2004 and the next date of hearing was fixed for 16-6-2004 on which date, none appeared for respondent and hence the respondent was proceeded against *ex parte*.

4. In support and to prove the case, petitioner stepped into the witness box as his own witness and also placed on record photocopy of seniority list Ex. P. A. of daily wagers maintained by Assistant Engineer, National Highway Sub-Division, H. P. P. W. D., Dharampur. In his statement, the petitioner has deposed that he was engaged as beldar on daily wages basis in January, 2001 and continued as such upto July, 2002 and no notice was ever served upon him nor any enquiry was conducted against him and his services were orally terminated in July, 2002 without payment of any retrenchment compensation. According to the petitioner, he had completed more than 240 days. He made repeated

requests to re-engage him, but without any result and junior persons namely Narosh, Muni Lal, Nand Lal etc. are still working with the respondent and that work is available with the respondent and even fresh recruitments has been made after his retrenchment. The petitioner has prayed for his re-engagement in service with consequential benefits including back wages continuity and seniority in service.

5. From the statement on oath of the petitioner coupled with document Ex. P. A. which is copy of seniority list of daily wagers in respect of Sub-Division, Dharampur for which there is no rebuttal, it stands proved that the petitioner was working on daily wages basis as beldar in National Highway Sub-Division of H.P.P.W.D. at Dharampur during the years 2001 & 2002 and has completed more than 240 days during the preceding 12 months, before his services were dispensed with.

6. The provisions of Section 25-F and 25-N of the 'Act' read, as under:

25-F. *Conditions precedent to retrenchment of workman.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

"[25-N. *Conditions precedent to retrenchment of workman.*—(1) No workman employed in any Industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:—

- (a) the workman has been given three month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded

in writing grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred to the Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months].

7. Admittedly no notice was served upon the petitioner nor any enquiry was conducted before the services were terminated. It has also come on record that no retrenchment compensation was paid to the petitioner.

8. From the oral as well as documentary evidence as discussed herein above. It is proved that there is violation of the provisions of Section 25-F and 25-N of the 'Act'. Accordingly, it is held that the termination of services of petitioner Amar Singh by respondent w. e. f. July, 2002 without complying the provisions of Section 25-F and 25-N of the 'Act' is not proper and justified. Thus, the petitioner is entitled to re-instatement in service with seniority and continuity in service. However he shall be entitled to back wages to the extent of 25% from the date of reference i. e. 5-12-2003. Let a copy of this award be sent to appropriate Government for publication in the official gazette.)

Announced in the open court today this 12th day of July, 2005 at Solan.

Seal
D. D. SHARMA,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Industrial Tribunal-cum-Labour Court,
Shimla Camp at Solan

Ref. No. : 346 of 2003
Instituted on : 12-12-2003
Decided on : 12-7-2005

Balbir Singh s/o Shri Prem Singh, r/o Village Chail
Dagryari, P. O. Rodi, Tehsil Kasauli, District Solan
.. Petitioner.

Versus

Executive Engineer,
National Highway Division,
H. P. P. W. D. Solan, Himachal Pradesh
.. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For the petitioner : Shri A. K. Gupta, Advocate.
For the respondent : Ex-parte.

AWARD

The following reference has been received for adjudication from the appropriate Government:—

"Whether the termination of services of Shri Balbir Singh s/o Shri Prem Singh workman by the Executive Engineer, National Highway Division, H. P. P. W. D. Solan w. e. f. month July, 2002 without complying with section 25-F and 25-N of the Industrial Disputes Act, 1947 is proper and justified? If not what relief of service benefits the above aggrieved workman is entitled to?"

2. In his statement of claim petitioner Balbir Singh, has alleged that he was engaged as daily waged holdar in January, 2001 and continued as such upto July, 2002 when his services were disengaged without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (the 'Act'). It is further alleged that the petitioner had completed 240 days of service and the principle of last come first go was not followed while disengaging the services of the petitioner and the persons junior to the petitioner are still working in the division and even fresh recruitment has been made after the disengagement of the services of the petitioner and despite efforts by the petitioner for his re-engagement the respondent did not agree and the petitioner was compelled to raise the industrial dispute before the Labour-cum-Conciliation Officer, Solan where the conciliation also failed. Lastly it is alleged that the disengagement of the petitioner is illegal, arbitrary and unjustified and violative of mandatory provisions of section 25-F and 25-H of the 'Act' which amounts to unfair labour practice. The petitioner has prayed for a direction to the respondent to reinstate him in service with all benefits including full back wages seniority etc.

3. Besides petitioner Balbir Singh, Executive Engineer, National Highway Division, H.P.P.W.D. Solan is a party. Accordingly notices were issued to the parties. On notice, Shri K. S. Saini, A. R. appeared for the respondent on 22-3-2004 and the next date of hearing was fixed for 16-6-2004 on which date, none appeared for respondent and hence the respondent was proceeded against ex-parte.

4. In support and to prove the case, petitioner stepped into the witness box as his own witness and also placed on record photocopy of seniority list Ex. P. A. of duly wagers

maintained by Assistant Engineer, National Highway Sub-Division, H. P. P. W. D. Dharampur. In his statement, the petitioner, has deposed that he was engaged as beldar on daily wages basis in January, 2001 and continued as such upto July, 2002 and no notice was ever served upon him nor any enquiry was conducted against him and his services were orally terminated in July, 2002, without payment of any retrenchment compensation. Accordingly to the petitioner, he had completed more than 240 days. He made repeated requests to re-engage him, but without any result and junior persons namely Naresh, Muni Lal, Nand Lal etc. are still working with the respondent and that work is available with the respondent and even fresh recruitment has been made after his retrenchment. The petitioner has prayed for his re-engagement in service with consequential benefits including back wages continuity and seniority in service.

5. From the statements on oath of the petitioner coupled with document Ex. P.A, which is copy of seniority list of daily wagers in respect of Sub-Division, Dharampur for which there is no rebuttal, it stand proved that the petitioner was working on daily wages basis as beldar in National Highway Sub-Division of H. P. P. W. D. at Dharampur during the years 2001 & 2002 and had completed more than 240 days during the preceding 12 months before his services were dispensed with.

6. The provisions of Section 25-F and 25-N of the 'Act' reads as under:

25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

- (a) the workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice;
- (b) the workman has been paid at the time of retrenchment compensation which shall be equivalent of fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

[25-N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any Industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
 - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer the workmen concerned and the person interested in such retrenchment, may having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
- (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
- (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or as the case may be, cause it to be referred, to the Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

- (7) Where no application for permission under sub-section (1) is made, or where the permissions for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all benefits under any law for the time being in force as if no notice had been given to him.
- (8) Notwithstanding anything contained in the foregoing provisions of this section the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.
- (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months]."

7. Admittedly no notice was served upon the petitioner nor any enquiry was conducted before the service were terminated. It has also come on record that no retrenchment compensation was paid to the petitioner.

8. From the oral as well as documentary evidence as discussed her in above. It is proved that there is violation of the provisions of Sections 25-F and 25-N of the 'Act'.

Accordingly, it is held that the termination of services of petitioner Balbir Singh by respondent *w. e. f.* July, 2002 without complying the provisions of Section 25-F and 25-N of the 'Act' is not proper and justified. Thus the petitioner is entitled to re-instatement in service with seniority and continuity in service. However, he shall be entitled to back wages to the extent of 25% from the date of reference *i. e.* 5-12-2003. Let a copy of this award be sent to appropriate Government for publication in the official gazette.

Announced in the open court today this 12th day of July, 2005 at Solan.

Seal
D. D. SHARMA,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Industrial Tribunal-cum-Labour Court,
Shimla Camp at Solan

Ref. No. : 347 of 2003

Instituted on : 12-12-2003

Decided on : 12-7-2005

Rati Ram s/o Shri Roshan Lal, r/o Village Lohanji,
P. O. Kumarhatti, Tehsil & District Solan
.. Petitioner.

Versus

Executive Engineer,
National Highway Division,
H. P. P. W. D. Solan, Himachal Pradesh.
.. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A. K. Gupta, Advocate

For respondent : *Ex-parte*

AWARD

The following reference has been received for adjudication from the appropriate Government :—

"Whether the termination of services of Shri Rati Ram s/o Shri Roshan Lal workman by the Executive Engineer National Highway Division, H. P. P. W. D. Solan *w. e. f.* month July, 2002 without complying with section 25-F and 25-N of the Industrial Disputes Act, 1947 is proper and justified? If not what relief of service benefits the above aggrieved workman is entitled to?"

2. In his statement of claim petitioner Rati Ram has alleged that he was engaged as daily waged Beldar in March, 2001 and continued as such upto July, 2002 when his services were disengaged without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (the 'Act'). It is further alleged that the petitioner had completed 240 days of service and the principle of last come first go was not followed while disengaging the services of the petitioner and the persons junior to the petitioner are still working in the division and even fresh recruitment has been made after the disengagement of the services of the petitioner and despite efforts by the petitioner for his re-engagement, the respondent did not agree and the petitioner was compelled to raise the industrial dispute before the Labour-cum-Conciliation Officer, Solan where the conciliation also failed. Lastly, it is alleged that the disengagement of the petitioner is illegal arbitrary and unjustified and violative of mandatory provisions of Section 25-F and 25-H of the 'Act' which amounts to unfair labour practice. The petitioner has prayed for a direction to the respondent to re-instate him in service with all benefits including full back wages, seniority etc.

3. Besides petitioner Rati Ram, Executive Engineer, National Highway Division H. P. P. W. D., Solan is party. Accordingly notices were issued to the parties. On notice, Shri K. S. Seini, A. R. appeared for the respondent on 22-3-2004 and the next date of hearing was fixed for 16-6-2004 on which date, none appeared for respondent and hence the respondent was proceeded against *ex-parte*.

4. In support and to prove the case, petitioner stepped into the witness box as his own witness and also placed on record photocopy of seniority list Ex. P.A. of daily wagers maintained by Assistant Engineer, National Highway Sub-Division, H. P. P. W. D. Dharampur. In his statement the petitioner has posed that he was engaged as Beldar on daily wages basis in March, 2001 and continued as such upto July, 2002 and no notice was ever served upon him nor any enquiry was conducted against him and his services were orally terminated in July, 2002 without payment of any retrenchment compensation. According to the petitioner, he had completed more than 240 days. He made repeated requests to re-engage him, but without any result and junior persons namely Naresh, Muni Lal Nand Lal etc. are still working with the respondent and that work is available with the respondent and even fresh recruitments has been made after his retrenchment. The petitioner has prayed for his re-engagement in service with consequential benefits including back wages, continuity and seniority in service.

5. From the statements on oath of the petitioner coupled with document Ex. P.A. which is copy of seniority list of daily wagers in respect of Sub-Division, Dharampur, for which there is no rebuttal, it stands proved that the petitioner was working on daily wages basis as beldar in National Highway Sub-Division of H. P. P. W. D. at Dharampur during the year 2001 & 2002 and had completed more than 240 days during the preceding 12 months before his service were dispensed with.

6. The provisions of Section 25-F and 25-N of the 'Act' reads as under :—

25-F. *Conditions Precedent to Retrenchment of workmen.*—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid at the time of retrenchment compensation which shall be equivalent of fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

"[25-N. *Conditions precedent to retrenchment of workman.*—(1) No workman employed in any Industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to

as the specified authority) has been obtained on an application made in this behalf.

for every completed year of continuous service or any part thereof in excess of six months.]

- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.
 - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such commission and a copy of such order shall be communicated to the employer and the workmen.
 - (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.
 - (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.
 - (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to the Tribunal for adjudication.
- Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.
- (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all benefits under any law for the time being in force as if no notice has been given to him.
 - (8) Notwithstanding anything contained in the foregoing provisions of this section the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.
 - (9) Where permission for retrenchment has been granted under sub-section (3) of where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately, before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay

7. Admittedly no notice was served upon the petitioner nor any enquiry was conducted before the services were terminated. It has also come on record that no retrenchment compensation was paid to the petitioner.

8. From the oral as well as documentary evidence as discussed herein above. It is proved that there is violation of the provisions of Sections 25-F and 25-N of the 'Act'. Accordingly, it is held that the termination of services of petitioner Ratti Ram by respondent w. e. f. July, 2002 without complying the provisions of Section 25-F and 25-N of the 'Act' is not proper and justified. Thus, the petitioner is entitled to re-instatement in service with seniority and continuity in service. However, he shall be entitled to back wages to the extent of 25% from the date of reference i. e. 5-12-2003. Let a copy of this award to sent to appropriate government for publication in the official gazette.

Announced in the open Court today this 12th Day of July, 2005 at Solan.

Seal.

D. D. SHARMA,

Presiding Judge,

H. P. Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Sh. D. D. Sharma, Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan

Ref. 21/2003.

Shri Ratti Ram V/s D. F.O. Renuka. District Sirmour
Himachal Pradesh.

25-7-2005

Present : None.

Case called repeatedly in pre and post lunch sessions. But none has appeared. It is already 3.45 p. m. Hence, the petition is dismissed for want of prosecution. Accordingly the reference is answered in negative. Let a copy of this order be sent to the appropriate Government for publication in the official gazette. It be consigned.

Announced.

D. D. SHARMA,

Presiding Judge.

Seal.

H. P. Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Sh. D. D. Sharma, Presiding Judge, H. P.
Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan

Ref. 106/2003.

Shri Babu Singh V/s M/s Deepak Cosmo Ltd. Ram
Bazar Road Nalagarh, District Solan, Himachal Pradesh.

29-7-2005.

Present : None for the Petitioner

Shri Rajeev Sharma, Adv. for the respondent.

Case called repeatedly in the pre and post lunch sessions, but none has appeared on behalf of the petitioner. It is already, 3.30 p. m. Accordingly the reference is answered against the petitioner forward of prosecution. Let a copy of this award/order be sent to the appropriate Government for publication in the official Gazette.

Announced.

D. D. SHARMA,

Presiding Judge,

Seal.

H. P. Industrial Tribunal-cum-Labour Court, Shimla.

In the Court of Sh. D. D. Sharma, Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Shimla Camp at Solan

Ref. 60/2004

Shri Yadvindar Sharma Vs. Executive Engineer, I &
PH Division Solan, Himachal Pradesh.

29-6-2005.

Present : None for the Petitioner.

Shri H. L. Sharma, A. E. I & PH Ad. for the
respondent (LOA filed).

Case called repeatedly in the pre and post lunch sessions but none has appeared on behalf of the petitioner despite valid service. It is already 3.00 P. M. Accordingly the reference is answered against the petitioner and dismissed in default for non-appearance of the petitioner. Let a copy of this order be sent to the appropriate government for publication in the official Gazette.

Announced.

D. D. SHARMA,

Presiding Judge,

Seal. H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Sh. D. D. Sharma, Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court, Shimla
Camp at Solan

Ref. 142/2004

Himachal Hotel Mazdoor Lal Jhanda Union Vs
M/s Toshali Royal view Resort Shilon Bag, P. O. Mudaghat District Shimla, Himachal Pradesh.

17-6-2005.

Present : Shri Hem Raj, A. R. for the petitioner.

Shri Sourindra Rout, A. R. for the respondent.

As per separate statements of the A R s for the parties recorded today in the court, the parties have settled the matter amicably outside the Court under Section 12 (3) of the Industrial Disputes Act, 1947. Copy of settlement has been placed on record as Ex. C-1.

In view of the settlement in between the parties placed on record under Section 12 (3) of the Industrial Disputes Act, 1947 and the Statements of the ARs of the parties recorded separately, the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for its publication in the official gazette.

Announced.

D. D. SHARMA,

Presiding Judge,

Seal. Himachal Pradesh Industrial Tribunal-cum-Labour Court Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
H. P. Labour Court, Shimla

Ref. No. : 47 of 2005

Instituted on : 1-6-2005

Decided on : 29-6-2005

Shri Jagdish Chand s/o Shri Gian Singh, Village Masli, Tehsil Chirgaon, District Shimla ..Petitioner.

Versus

1. The Convener/President, Community Development Cell, Government Polytechnic College, Rohru, District Shimla.

2. The Principal Government Polytechnic College, Rohru, District Shimla, H. P. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Hem Raj AR.

For respondents : Shri S. N. Singh, AR.

AWARD

The following reference has been received for adjudication from the appropriate Government.

"Whether the termination of services of Shri Jagdish Chand s/o Shri Gian Singh workman by (1) The Convener/President, Community Development Cell, Government Polytechnic College, Rohru, District Shimla, (2) The Principal, Government Polytechnic College, Rohru, District Shimla, H. P. w. e. f. 1-1-2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of consequential service benefits including re-instatement, seniority, back wages and amount of compensation, the above aggrieved workman is entitled?"

2. On notice, the parties put in appearance and after deliberation came to amicable settlement. The respondents are ready and willing to take back the petitioner in service in terms of norms, guidelines and scheme of the Community Polytechnics sponsored by Department of Secondary & Higher Education, Ministry of Human Resource Development, Government of India dated July, 2001, but without payment of back wages. The statements of Shri S. N. Singh, HOD Pharmacy/Project Officer, Community Polytechnic Scheme, Government Polytechnic College, Rohru, District Shimla and petitioner Jagdish Chand recorded. As per statement of Shri S. N. Singh, the petitioner was engaged as trainee Electrical and House Wiring w. e. f. 1-4-2002 and he worked as such with national breaks till 31-12-2003 at village Masli, Tehsil Chirgaon and that the services of petitioner were not terminated and the respondent is ready to take back the petitioner in service in terms of norms, guidelines in scheme of Community Polytechnic sponsored by Department of Secondary and Higher Education, Ministry of Human Resource Development, dated July, 2001 and that the services of the petitioner will not be terminated except in due process of law and scheme and further that the working period of petitioner is w. e. f. 1-4-2002 to 30-9-2002, 1-11-2002 to 31-3-2003 and 10-7-2003 to 31-12-2003 and further that the petitioner shall have to work where the extension centre is opened by the Community Polytechnic and where the trainees are available as per norms, guidelines and scheme. Photocopy of Scheme and guideline have been placed on record as Ex. RA and Ex. RB. The petitioner in his statement has deposed that he is ready and willing to work on terms and conditions admissible under the law and he forgo the back wages. However, he be given seniority.

3. The state Government has made reference whether the termination of services of Shri Jagdish Chand s/o Shri Gian Singh workman by (1) The Convener/President Community Development Cell Government Polytechnic College, Rohru, District Shimla, (2) The Principal, Government Polytechnic College, Rohru, Shimla Himachal Pradesh w. e. f. 1-1-2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, to what relief of consequential service benefits including re-instatement, back wages and amount of compensation the above aggrieved workman is entitled.

4. From the documents Ex. RA and Ex. RB which are photocopies of norms and guidelines of the scheme of Community Polytechnic, it is evident that the Ministry of Human Resource Development, Department of Secondary Education & Higher Education, Government of India prepared a Guideline Document for the scheme of Community Polytechnic highlighting the scheme and

providing broad guideline envisaged under the scheme for its effective planning, implementation and monitoring, who view to provide meaningful and qualitative non formal training towards competency and need based course in various trades or multiple skills by qualified trainers in consultation with highly qualified faculty/staff of the polytechnics to rural youth, women, school dropouts, SC/STs and other weaker sections and under privileged groups of the society to enable them to obtain gainful employment (self and wage) and in turn improving their life style. The scheme is one of the key schemes of the Technical Education started under the Direct Central Assistance Scheme with a view that Community Polytechnics should act as focal points for development of rural community through the application of science and technology in the rural areas and employment opportunity through non formal training in commercial skills in various trades. The Community Polytechnic is not a separate institution and it is a wing attached to the regular Polytechnic under the Direct Central Assistance Scheme under the Ministry of Human Resource Development. One of broad objective of the scheme is ensuring for the rural society a fair share of benefits from the investments in technical education system and thus bringing socio-economic upliftment and improvement of quality of life of rural community and major operational activity of the scheme is to train youth, women, and other disadvantaged groups in employable skills and to provide technical and other support services for improving local capabilities and to create awareness regarding development programmes for creating problem solving environment and to provide basic skills, knowledge and attitudes for self/wage employment in their own village and nearby areas. The salient features of the scheme is that the Community Polytechnic should target the poor and deprived sections of society in both urban and rural areas specifically Women, SCs/STs, minorities, School Dropouts, Street Children and Physically Handicapped and the programme has to be flexible and non formal with open access to all without any pre-condition of age, sex and educational qualification. As per scheme, in rural areas, a large number of equipments are being used in farms and non farm sectors and for their sustained working, proper repair and maintenance services are to be provided and technical help to solve their practical problem by undertaking minor repairs of equipments at site and the villagers also need support of other kind of their professional improvement to widen the scope of their activities and to enhance their productivity.

5. Admittedly in the present case the provisions of the Industrial Disputes Act, 1947 have not been complied with before dispensing with the services of the petitioner. Thus in terms of reference made by the State Government the termination of petitioner is not proper and justified. However, as per statement of petitioner himself, he has forgone the benefit of back wages. Accordingly, the respondents are directed to re-instate the petitioner forthwith seniority and continuity in service but without back wages and compensation. However, it is made clear that in order to accomplish ground level physical delivery of new technologies at the doorsteps of the rural people, the Respondents shall be at liberty to depute the petitioner to any Extension Centre opened/established by it within its territorial jurisdiction during the existence of the Scheme of Community Polytechnics. The reference is answered accordingly. Let a copy of this award be sent to appropriate government for publication in the official gazette.

Announced in the Open Court today this 29th Day of June, 2005.

Seal.

D. D. SHARMA,
Presiding Judge,
H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri D. D. Sharma, Presiding Judge,
Himachal Pradesh Industrial Tribunal-cum-Labour
Court, Shimla

Ref. 146/99

Shri Jagdish Chander Sharma

V/s.

Principal, G. G. D. S. D. College Sabathu, District Solan, Himachal Pradesh.

22-7-2005.

Present : Petitioner with Shri J. C. Bhardwaj, A. R. Shri M. L. Sharma. Respondent in person.

The parties have amicably settled the dispute and as a result of amicable settlement and separate statements of petitioner and Shri M. L. Sharma, Principal of the respondent college recorded today in the Court, the petitioner has received cheque No. 099503, dated 21-7-2005 payable at S. B. I. Subathu to the sum of Rs. 50,000/- (Rupees fifty thousand only) as full and final settlement of the claim in the reference application No. 208/1998. Now no dispute of any kind survives between the parties. The reference is answered accordingly. The copy of this order be sent to the appropriate government for publication in the official gazette.

Announced.

Seal.

D. D. SHARMA,
Presiding Judge.

H. P. Industrial Tribunal-cum-Labour Court,
Shimla.

In the Court of Shri George, Presiding Judge, Labour
Court-cum-Industrial Tribunal, Dharamshala,
Himachal Pradesh Camp at Dehra

Reference No. 252/2001 (RBT No. 102/04).
Instituted on 5-11-2001
Decided on 6-7-2005

Manohar Lal son of Shri Roshan Lal, r/o Village & P. O. Sathana, Tehsil Fatehpur, District Kangra, Himachal Pradesh

Petitioner.

V/s.

M/s Himachal Corbon Pvt. Ltd. Industrial Area, Sansarpur Terrace, District Kangra, Himachal Pradesh.
Respondent.

"Reference under section 10 of the Industrial Disputes Act, 1947".

For the petitioner : Shri N. L. Koundal, A. R.
For the respondent : Shri K. K. Sharma, Adv.

AWARD

The following reference has been received for adjudication from the appropriate government:—

"Whether the termination of the services of Shri Manohar Lal s/o Shri Roshan Lal w. e. f. 6-5-2000 by the Management of M/s Himachal Corbon Pvt. Ltd., Plot No. 59 to 62, Industrial Area, Sansarpur Terrace, District Kangra, Himachal Pradesh without complying the section 25-F of the Industrial Disputes Act, 1947 is legal and justified. If not, what relief of service benefit and amount of compensation the above workman is entitled to?"

2. On notice, the petitioner filed his statement of claim with the assertions that he has worked with the respondent as Helper w. e. f. 20-11-1998 till 6-5-2000 and his services were terminated by the respondent without giving any notice or one month's salary and he was not

allowed to enter the gate of industry without assigning any reason and he visited daily upto 16.7.2000. The petitioner further pleaded that six days salary for the month of May, 2000 and the deducted amount is pending with the respondent. The petitioner averred that the respondent has retained the junior persons and also recruited new persons. The termination of services of the petitioner is unlawful, arbitrary and unconstitutional and also violative of Section 25-F of the Act. The petitioner thereupon, prayed for his reinstatement in the service, with salary, deducted amount and security from the date of his initial appointment.

Relief

The petition is dismissed as non-operative part of the award.

REASONS FOR FINDINGS

Issue No. 1

7. The petitioner Shri Manohar Lal appeared as PW1 and he stated that he worked with the respondent as helper from 20.11.1998 to 5.5.2000 and his services were disengaged by the respondent on 6.5.2000 without any notice or charge sheet nor he was paid retrenchment compensation. He also stated that his junior namely, Bakshish Ram Pal Surinder etc were retained by the respondent while disengaging his services. In his cross-examination he stated that he is not a position to bring on the record to show that he was engaged by the respondent w.e.f. 20.11.1998 or he is in a position to state, as to how many days actually he worked during the year 1999. He denied the suggestion of the respondent that he was actually engaged as a regular employee, but he is not in a position to produce his a bondcard issued by the respondent. He denied that in May, 2000 he started harassing other employees by hurling threats to kill them if they will not contribute fees towards the union and that he used to hurl threats to kill his co-workers. He admitted that the worker Rump Lal, Hare Lal, Madan Lal, Mangal Singh, Surinder, Purnasham, Charan Dass, Ram Pal, Mohinder Pal are also working in the factory to the respondent. However, he denied that all these persons made complaints to the management against him with regard to his illegal collection of fees from the co-workers, and in case of their denial, he used to hurl threats to kill them. He also denied that the management conducted inquiry and a notice was issued to him, which he refused to accept and that his services were terminated on account of his conduct for disturbing the peaceful atmosphere of the factory. He denied that he was asked to collect his one month salary or any other dues from the office as per letter Ex. K-1, but he refused to accept the same. He was put to the suggestion that he was not attending his duties regularly, he used to come some time for one or two days and used to leave the factory at his own without giving any information to the management. However, he admitted that any daily waged workers who is not working properly and tried to disturb the peaceful atmosphere of the factory, his services can be terminated by the management at any time without any notice. He admitted that he was a daily waged worker and he was, therefore, terminated.

8. Shri Kishan Singh appeared as RW 1, on behalf of the respondent being General Manager, of the respondent/factory and he stated on oath that the petitioner was engaged as daily waged worker and the petitioner worked with breaks for one and a half year and he was not regular. No need to attend the factory at his own will and he some time used to come for 2/3 days and thereafter he used to remain absent, and in the factory he used to intimidate other co-workers. He used to hurl threats to kill them, if they will not contribute fees collected by him. The complaint Ex. Complaint Ex. RW1/H was made against him by his co-workers. The management conducted inquiry and served a notice Ex. H-1 upon the petitioner which he refused to accept and not acknowledged the same.

9. From the statement of the petitioner it appears that he worked as daily waged worker with the respondent from November, 1998 till first week of May, 2000, with intermittent breaks. The petitioner has led no cogent and convincing evidence on the record to prove that he worked continuously for 240 days during the last preceding 12 months. It is settled position of law that the requirement of the statute of 240 days cannot be disputed, and it is for the workman concerned to prove that he has in fact, completed 240 days in the preceding 12 months period as held in *Eron Denki vs. Nujir Kumar*, 2001, 1 L.R. 111.

10. The petitioner has not led any evidence to prove that he in fact, completed 240 days of his continuous service in the preceding 12 months and therefore, the

3. The respondent contested the claim petition filed by the petitioner and filed written reply wherein raised preliminary objection that the petition is neither competent nor maintainable on account of acts, conduct, deeds and acquiescence of the petitioner. The petitioner is genuinely employed. On merits, the respondent pleaded that the petitioner was habitual absentee and has never completed 240 days in a calendar year and he used to harass the co-workers and was creating hindrance in the smooth running of the factory. The services of the petitioner were terminated on account of committing acts, conduct after receiving complaints from other workers, after following the principle of natural justice. The respondents averred that no fresh appointments have been made from the open market. The respondent denied all his other assertions made by the petitioner in the statement of claim and prayed for the dismissal of the claim petition.

4. The petitioner filed rejoinder to the reply filed by the respondent wherein he reiterated and affirmed the assertions made by him in the statement of claim and denied all other pleadings made by the respondent in their reply.

5. On the respective pleadings of the parties the following issues were framed for decision on 20.11.2004.

1. Whether the termination of the service of the petitioner w.e.f. 6.5.2000 by the respondent is without complying the mandatory provision of section 25-F of the I.D. Act and therefore, illegal and unjustified as alleged? (OPA)
2. If issue No. 1 is proved in affirmative to what relief the petitioner is entitled to with regard to his service benefits, and amount of compensation? (OPP)
3. Whether the petition is not maintainable? (OPR)
4. Whether the petitioner has concealed the material facts from the court and therefore, the petition is not maintainable? (OPR)
5. Whether the petition is not maintainable due to act and conduct and acquiescence of the petitioner? (OPP)
6. Relief.

6. For the reasons to be recorded herein after my issue-wise findings are as under:

Issue No. 1
Issue No. 2
Issue No. 3
Issue No. 4
Issue No. 5

Relief

REASONS FOR FINDINGS

Issue No. 1 N.
Issue No. 2 The petitioner is not entitled for any relief?
Issue No. 3 Yes
Issue No. 4 Not proved
Issue No. 5 Not proved

petitioner is not entitled for the production of section 25 I of the Industrial Disputes Act. A general statement of the petitioner that he worked continuously i.e. / 26.11.98 to 5th May, 2000 cannot be taken as sufficient to conclude that he completed 240 continuous working days in the last preceding 12 months. Under these circumstances where he is unable to produce his working attendance card issued to him by the management while appearing as PW1. The petitioner in his cross examination has shown his inability to produce his attendance card. If the petitioner would have completed his 240 days continuously in the preceding 12 months the petitioner had no reason to conceal his attendance card. he would have readily brought the same on the record. The statement made by Shri Kishan Singh (PW1) who is also working as a Chief Manager in the respondent/factory that the petitioner used to come only 2-3 days, and thereafter he used to remain absent and he used to attend the work at his own will remained uncontroverted and unchallenged in his cross examination.

11. Taking into consideration the totality of the evidence of the parties, as has been discussed above, the petitioner has failed to discharge the onus to the satisfaction of the Court to prove that he has indeed completed 240 days of his continuous working in the preceding 12 months period. Accordingly, it cannot be concluded by this Court that the respondent in any manner disengaged the services of the petitioner in violation of mandatory provisions of section 25-F of II of the Act. This issue is decided in favour of the respondent and against the petitioner.

Issue No. 2

12. In view of my findings on issue No. 1 above, since the petitioner has not been able to prove that he has in fact completed 340 days in the preceding 12 months period of his disengagement and accordingly he is not entitled for the protection of section 25 F or H of the Industrial Disputes Act, and therefore, the petitioner is not entitled for any services benefit. This issue is accordingly decided in favour of the respondent and against the petitioner.

Index No. 1

14. Since the petitioner has failed to prove that his disengagement is violative of section 25 F and H of the Act, and accordingly the petition is not maintainable. This issue is decided against the petitioner and in favour of the respondent.

Issues No 4 and 5

14. The 14th counsel appearing on behalf of the respondent stated that he does not want to press any of these issues. Accordingly, both these issues are decided as unopposed.

1011

15. In view of my findings on the above issues, the petition being without any merits stands dismissed. The reference is answered in the affirmative.

It is that a copy of this award is sent to the appropriate Government for publication in the official gazette. The file after completion be consigned to record room.

Announcement

Next!

CHIEF,
Presiding Judge
H. P. Lahori Court cum Industrial Tribunal
Dharamshala H. P. (Camp at Dehra H. P.)

ननु हेमीम परिवाजनाम मय विभुत विनाम

५३ (२) ५५५५

THU-11 3, 11, 11-11-11

[illegible]

४. वहाँ अविशुद्धता गिन सको। गीतिका या की वलसे म-अधिक
ही सकते हैं, की सातकारा के गिन मुमि मनेन अविशुद्धता। १०५४
की धारा ४ के अविशुद्धता के धनगत कारा की जाती है।

3. पूर्वीय, धार्मिक, ब्राह्मण, भट्ट, गणितियों का प्रयोग करने वाला
 शास्त्राचार, शिक्षाचर प्रवेक इस समय इस उपक्रम में शामिल नहीं
 शिक्षाकारों, उनमें शामिलियों और नमियों को बचाए हो किता
 भी भूमि में प्रयोग करने और लक्ष्यता करने का जो उन धार्मिक
 शामिलित व्यवसाय शामिल गद्य नहीं पूर्वीय को करने के लिए लक्ष्य
 शामिल करने हैं।

4. काई भी हितयक्ष न्यापित, जिसे उना परिवर्तन में काया।
मुनि क. अर्जुन पर काई सापत्ति से नी वस्तु हल सधियनना के
प्रकाशित होने। सोम बिनी की जवाम के अंगन स्थितित रूप में
पर अर्जुन भगवद्गीता हितयक्ष अवेम कायम विद्यमान बोई मयडी के
महल पत्नी सापत्ति बायक कायक मकना है।

विषय र र्थाः।

जि.सं. १५४६१

१५ वी

मीव धरणी गाँव (वीथी म.)

ବର୍ଷା/୨୦୧୫

समिति/2008	84/1	10	1000	1.2
------------	------	----	------	-----

17 m	2	0	0.4	0.4
------	---	---	-----	-----

शक्ति भव

दिनांक २१ सितम्बर, २०१०

संख्या बिशुन छ (5) 250/2000 इस बिभाग की समसंख्य
बिधियुक्त विनोद 131 2000 की कि गांव चुल्हा, तहसील
लखनौली, जिला मधेही में 133 संख्या 10 संवार लाईन चुल्हा से
बस्ती के निर्माण हेतु भूमि अधिग्रहण करने के लिए भू अनेक
अधिनियम, 1954 की धारा 4 के अन्तर्गत जारी की गई है, में
गांव चुल्हा की भूमि अंतरा संवार 5550/525/1 ताबादी
"0-0-00" का नक्का उपर स्थान पर "0010" तथा गांव
मडी मकरी की भूमि अंतरा संवार "2150/102/1" की स्थान
पर अंतरा संवार "2150/102/1" भूदा अंतरा

सिमावली, ११ सितम्बर, २०००

संख्या निम्न छ (१) १/१११११ इस विभाग की समसंयोजक
सावित्रिका बिनाक १५० १११११ की कि भवन बाबू खास, हीराबाग
बाबू, भाबू, कलकत्ता, मन्त्रिकीय, जय भद्राज रामगण, तल्लुकी
भवन, जिला जग में १११ के भी १११ संचार लाईन बाबू से भगवत
नक तिलास के लिए भूमि अधिग्रहण करने के लिए पत्र भवन
अधिनियम, १९५४ की धारा ४ के संलग्न गरी की गई है, स